TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 178

THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, PETITIONER,

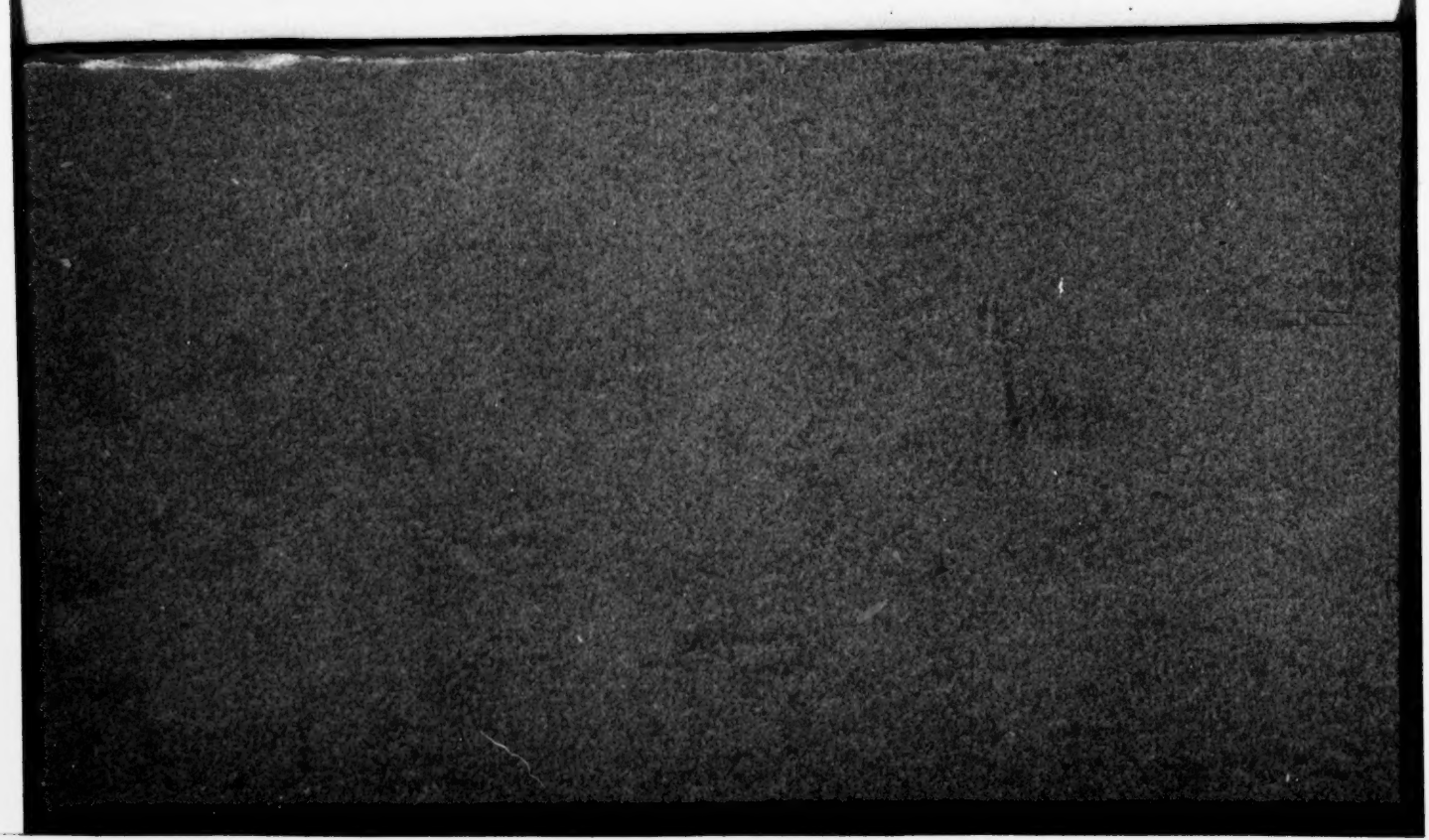
vs.

R. H. COURTNEY, RECEIVER, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 22, 1900.
CERTIORARI AND RETURN FILED NOVEMBER 5, 1900.

(17,939.)



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a Filed Sep. 26, 1899. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

THE FIDELITY & DEPOSIT COMPANY OF MARYLAND, Plaintiff in Error,
vs.
R. H. COURTNEY, Receiver of the German National Bank of Louisville, Defendant in Error. } No. 751.

Error to the circuit court of the United States for the district of Kentucky.

Record.

Original transcript filed July 29, 1899.

1 *Transcript of Record.*

Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal Court hall, in the city of Louisville, on Monday, February 20th, A. D. 1899.

Present: Hon. Walter Evans, sitting as circuit judge.

R. H. COURTNEY, Receiver of the German National Bank,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Be it remembered, that heretofore, to wit, on the 5th day of February, 1898, came plaintiff herein, R. H. Courtney, receiver, by his attorney, and filed his petition in the above-styled cause, which petition is as follows:

United States Circuit Court for the Sixth District of Kentucky.

R. H. COURTNEY, Receiver of the German National Bank,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Plaintiff, R. H. Courtney, states that on the 1st day of June, 1894, the German National Bank of Louisville was a duly incorporated and chartered national bank of the United States, under the laws of the Congress of the United States, known as "the national bank act," and as such authorized to transact a general banking business at Louisville, Kentucky, and to contract and be contracted with, sue and be sued in said name of "the German National Bank of Louisville;" that said banking association so continued until
2 January 18th, 1897, when same was by order of the Comptroller of the Currency of the United States closed—that on January 22nd, 1897, plaintiff, R. H. Courtney, was duly and legally appointed by said comptroller as receiver of said banking association and qualified as such, and is now such receiver and as such

entitled to the assets and choses in action belonging to said German national bank. Plaintiff further states that he, the said R. H. Courtney, is a resident and citizen of the city of Louisville, State and district of Kentucky; plaintiff further states that the defendant, The Fidelity & Deposit Company of Maryland, was then and is now a duly organized and incorporated company for commercial purposes, under and by virtue of the laws of the State of Maryland, and as such was and is authorized to contract and be contracted with, execute bonds of guaranty and indemnity, to sue and be sued and to go surety for the performance of the duties of officers, etc., of national banks and other institutions, and that said corporation by its articles of incorporation and the laws of the State of Kentucky, possesses all of said powers within the State of Kentucky.

Plaintiff, R. H. Courtney, says that the German National Bank of Louisville was on the first day of June, 1894, a duly organized national banking association under the laws of the United States of America—known as the national banking acts—and doing a banking business at Louisville, Kentucky, and authorized to contract and be contracted with, and sue and be sued in said name, "the German National Bank of Louisville," that Jacob M. McKnight was the president thereof, and that on the 1st day of June, 1894, the said Fidelity and Deposit Company executed a bond, No. 5002, to said banking association to hold it harmless by reason of any loss that it might sustain by reason of any fraudulent act or acts of said Jacob M. McKnight, president, during the continuance of the said bond in the performance of the duties of his said office or of such other position as he might subsequently be appointed to or called upon to fill by said bank in said service, not in excess, however, of the penalty of said bond, to wit, $10,000.00—that on the 1st day of June, 1895, said Fidelity and Deposit Company by renewal receipts renewed said bond to said banking association for the term of one year, that is, from June 1st, 1895, to June 1st, 1896, and on the 1st day of June, 1896, said Fidelity and Deposit Co. renewed said bond to said bank by another renewal receipt, from the 1st day of June, 1896, to the 1st day of June, 1897, said bank continued its said business under said charter and said McKnight being still the president;

3 that subsequent to the execution of said bond and during the continuance thereof and the renewals thereof, the said Jacob M. McKnight in the performance of the duties of his said office and of such other position as he was subsequently appointed to and called upon to fill in said service, did feloniously embezzle, abstract and willfully misapply money, securities and other personal property belonging to said association to the amount of $18,742.74, as is more particularly described and set out hereinafter, in the itemized account herein included as part hereof; that by reason thereof said German national bank has sustained pecuniary loss to the amount of $18,742.74, that said acts of Jacob M. McKnight and each of them, in embezzling abstracting and misapplying said money, securities and personal property of said bank as aforesaid, were and are all dishonest and fraudulent acts; that said bank has at all times complied with the conditions of said bond that it was

required to do by the terms thereof, and that no part of said loss has been made good to said bank, and said bank holds no further bond or guarantee of surety for said loss; that on the 18th day of January, 1897, said German national bank was closed by order of the Comptroller of the Currency and the employment of said McKnight ceased and on the 22nd day of January, 1897, said affiant, R. H. Courtney, was duly and regularly appointed by the Comptroller of the Currency of the United States as receiver of said bank and qualified as such, and is now such receiver and entitled as such to recover the said amount of $10,000 under said bond of said Fidelity and Deposit Company, said renewal receipts are herewith filed as part hereof, marked "A" & "B."

Said itemized statement being as follows:

July 11th, 1894.—To amount collected by Jacob M. McKnight, president of the German national bank, of the funds of said bank, from the Columbia Finance — Trust Company, agents of Attilla Cox, assignee of J. G. Mattingly & Sons, on a claim owing by said J. G. Mattingly & Sons, to said bank, which amount was collected by said Jacob M. McKnight as aforesaid, who willfully misapplied same to his own use and benefit and never accounted to the bank therefor.

Amount..... ..... $252.09

January 21st, 1896.—To amount paid by German national bank on check of S. E. Edmunds, dated January 18th, 1896, on the said German national bank, payable to cash or bearer, for $1,000.00;
4 said check having been drawn by said Edmunds on said bank and presented to the said McKnight as president, for payment, and which said check the said McKnight did on the said 21st day of January, 1896, pay and cause to be paid out of the funds of said bank to the said S. E. Edmunds, when the said McKnight then and there knew that the said Edmunds had no funds in said bank against which he was entitled to make checks—and the said McKnight did then and there pay and cause to be paid said check, for the fraudulent purpose of willfully misapplying said amount for the use and benefit of himself and the said Edmunds and other persons unknown, and to defraud said bank of same.

Amount..... $1,000.00

January 21st, 1896.—To amount paid and caused to be paid to M. A., D. A., and J. G. Sachs by Jacob H. McKnight, president of the German national bank, on check of the said McKnight on said bank for $1,253.00, said McKnight knowing at the time that he had no funds in the bank against which — was entitled to check, did fraudulently and willfully misapply the funds of said bank, in payment of said check as aforesaid and apply same to his own use and benefit.

Amount..... $1,253.00

February 6th, 1896.—To amount paid F. A. Britt and J. W. Reeder on note executed by them, dated February 6th, 1896, due

in one year, for $2,000.00, payable to the order of themselves and endorsed by them on the back thereof, said note being made payable to the German national bank; that the said Jacob M. McKnight, president aforesaid, at the time of the pretended discounting of said note well knew that the said F. A. Britt and J. W. Reeder were both insolvent and that the said paper was worthless, but that he did then and there so receive same and pay them therefor the sum of two thousand dollars ($2,000.00) of the funds of the said bank, for the fraudulent purpose of willfully misapplying said amount to his own use and benefit and that of F. A. Britt and J. W. Reeder and of defrauding said bank of said money, without the knowledge or consent of directors or exchange and discount committee.

Amount..... $2,000.00

February or March, 1896.—To amount paid M. A., D. A., and J. G. Sachs, on check of J. M. McKnght on the German national bank for $1,650.00, said payment being made and caused to be made by the said J. M. McKnight, president, out of the funds of said bank, for the fraudulent purpose of willfully misapplying said funds to his own use and benefit and that of the said Sachs—said Jacob M. McKnight knowing at the time that he had no funds in said bank against which he was entitled to check or out of which said check could be paid.

Amount..... $1,650.00

June 8th, 1896.—To payment of check of J. M. McKnight on the German national bank to the Union national bank for $3,736.60, out of the funds of the said German national bank, said J. M. McKnight knowing at the time he paid said check and caused the same to be paid that he had no funds in said bank against which he was entitled to draw said check or out of which same could be paid—and he did then and there, for the fraudulent purpose of misapplying said funds of said bank, pay and cause to be paid said check.

Amount..... $3,736.60

January 4th, 1897.—To amount paid and caused to be paid to the Union national bank by J. M. McKnight, president of the German national bank, out of the funds of said German national bank, on a check of the said McKnight, said McKnight knowing at the time that he had no funds in said German national bank against which he was entitled to check or out of which said check could be paid; but fraudulently and with the intent to willfully misapply the funds of said bank and to convert same to his own use and benefit and that of the Union national bank, did pay and cause to be paid said check.

Amount $379.96

April 6th, 1895.—Demand note of German Shoe Company for $2,500.00, October 30, 1895, demand note of German Shoe Company

for $1,000.00, January 2nd, 1896, ninety-day note of German Shoe Company for $900.00.

Said notes being entitled to an offset of $740.29, as of date January 18th, 1897, the date of the suspension of said bank, by reason of that amount being to the credit of the shoe company in their open account—that at the time of the execution of the said notes and all of them the said McKnight was a stockholder and officer in the said German Shoe Company, and that he then and there well knew that said notes were not good and bankable paper, and that said loans and each of them were made without the knowledge or consent of the board of directors of said German national bank or the discount and exchange committee thereof, and that loans were made and caused to be made of the said amounts out of the funds of the said bank, by the said J. M. McKnight, president aforesaid, for the fraudulent purpose of willfully misapplying the funds of said bank and converting same to his own use and benefit and that of the German Shoe Company.

6

Amount $4,400.00

On November 21st, 1896, said J. M. McKnight was indebted to the German national bank in the sum of $7,127.94, evidenced by a promissory note held by said bank, signed "S. E. Edmunds & Co." and the said J. M. McKnight being a member of the firm of S. E. Edmunds & Co. That the said J. M. McKnight did cause the said Edmunds to execute to the German national bank a note, dated November 19th, 1896, payable on demand, for $2,127.94, with interest from maturity, and that he did cause said Edmunds to execute another note, dated November 16th, 1896, to the German national bank, payable in sixty days, for $5,062.32, with interest from maturity; that said McKnight as president aforesaid, did place said notes in said bank in lieu of the $7,127.94 note and withdrew the said last-named note from the assets of said bank, thereby canceling the indebtedness of said S. E. Edmunds & Co. and attempting to release himself from the said original note held by the said bank against said S. E. Edmunds & Co.; that on said original note and to secure the payment of same there were certain collaterals deposited, which affiant believes he will be able to realize thereon sufficient to pay the $5,062.22 note, except $500.00 thereon; but that he does not believe that he can realize any more; that the change of said notes as aforesaid and the releasing of J. M. McKnight thereon was done for the fraudulent purpose of defrauding said bank and for his own use and benefit, without the knowledge or consent of the directors or exchange and discount committee.

Amount $2,627.94

March 19th, 1895.—To amount of demand note, executed by the said J. M. McKnight to the said German national bank and caused to be discounted by the said bank by the said J. M. McKnight, which note at the time was entirely worthless and so known to the said McKnight to be, and was so discounted as aforesaid without

the knowledge or consent of the board of directors of said
7 German national bank or the discount and exchange committee thereof.
Amount $1,000.00

To sundry items carried and caused to be carried in said bank by said J. M. McKnight, as cash items, namely, $25, $76, $25, $10, $15, $45 and $47.15, the proceeds of which *has* been misapplied by the said McKnight, without the knowledge or consent of the directors or exchange committee.

Amount $443.15

Making total loss $18,742.74

Plaintiff says that he has not the original bonds and cannot file same herewith; that he cannot say where said bonds *is*, as he has no information, but he believes and states and charges that same *was* delivered up to said company at the time of the execution of said renewal receipts; therefore he cannot and does not state specifically the terms and conditions of the said bond herein. He says that on July 2nd, 1897, proof of said claim, as herein set forth, was duly made by him as required by the terms and conditions of said bond and demand of payment thereof made of said defendants by presenting said proof of claims both at said home office in the city of Louisville, Kentucky, and sending same to their office in Baltimore, Maryland. That said amount or no part thereof has ever been paid, but is still due and owing, and that — the time of the execution of said bond and also the said renewal receipts, same *was* delivered by the defendants to said bank and duly accepted by them, and thereunder said McKnight entered upon and continued in the discharge of the office aforesaid.

Wherefore plaintiff says that they have been damaged in the amount above mentioned.

Wherefore they pray judgment against the defendants for the sum of ten thousand dollars ($10,000.00), with interest and costs, and for other necessary and proper relief.

W. M. SMITH,
Attorney for Plaintiff.

8 Renewal receipts hereto attached are as follows:

Security department.

No. 2360. Amount, $10,000.
Premium, $40.

Fidelity and Deposit Company of Maryland.

Home office, Baltimore, Md.

In consideration of the sum of forty and $\frac{00}{100}$ dollars, the Fidelity and Deposit Company of Maryland hereby guarantees the fidelity of Jacob M. McKnight, president, in the sum of ten thousand dol-

lars in favor of the German national bank, Louisville, Ky., from the first day of June, 1895, to the first day of June, 1896, subject to all covenants and conditions set forth and expressed in the bond of this company, No. 5002, heretofore issued on the first day of June, 1894.

[SEAL.] E. M. WARFIELD, *President*,
THOS. T. BERRY,
Acting Secretary.

Security department.

No. 4043. Amount, $10,000.
Premium, $40.

Fidelity and Deposit Company of Maryland.

Home office, Baltimore, Md.

In consideration of the sum of forty and $\frac{00}{100}$ dollars, the Fidelity and Deposit Company of Maryland hereby guarantees the fidelity of Jacob M. McKnight, president, in the sum of ten thousand dollars, in favor of the German national bank, Louisville, Ky., from the first day of June, 1896, to the first day of June, 1897, subject to all the covenants and conditions set forth and expressed in the bond of this company, No. 5002, heretofore issued on the first day of June, 1894.

[SEAL.] E. M. WARFIELD, *President.*
H. E. BOSLER, *Secretary.*

9 Upon — there issued the following process:

The President of the United States of America to the marshal of the Kentucky district, Greeting:

You are commanded to summon the Fidelity and Deposit Company of Maryland to answer on the first day of the next February term of the circuit court of the United States for the district of Kentucky, to be held at the city of Louisville, a petition against it in said court by R. H. Courtney, receiver of the German national bank, and warn it that upon its failure to answer, the petition will be taken for confessed, or it will be proceeded against for contempt, and you will make due return of this summons on the first — of the next term of said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Louisville, in the said district, this 5th day of February, in the year of our Lord 1898, and of our Independence, the 122d.

THOS. SPEED,
C. C. C., K. D.,
By HENRY F. CASSIN, *Deputy.*

And the marshal made the following return thereon:

Executed on the Fidelity & Deposit Co. of Maryland by delivering a true copy of the within to Willis S. Mullen, gen'l ag't of said Co., this 5th day of February, 1898.

A. D. JAMES, *U. S. M.*,
By W. A. BLACKBURN, *D. M.*

And on the 15th day of March, 1898, came the defendant, Fidelity & Deposit Company of Maryland, and filed its answer in the above-styled cause.

Said answer is as follows:

United States Circuit Court for the District of Kentucky.

R. H. COURTNEY, Receiver,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Answer of Defendant.

The Fidelity and Deposit Company of Maryland, for answer to the petition herein, says:

10 First. That it is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and a resident thereof, and a resident of the United States, district of Maryland, and is not a resident or inhabitant of the district of Kentucky, and that the circuit court of the United States in and for the said district of Kentucky has no jurisdiction of this action.

Second. This defendant has no knowledge or information sufficient to form a belief that Jacob M. McKnight, the person named in the petition, feloniously or otherwise embezzled, abstracted or willfully misapplied moneys, securities or other personal property belonging to the said association, to the amount of $18,742.74 or in any amount whatever, or that the German national bank, mentioned in the said petition, has sustained pecuniary loss to the said amount or to any other amount, or that the accounts of Jacob M. McKnight, or any of them, were dishonest or fraudulent or that said bank had at all times or at any time complied with the conditions of the said bonds mentioned in the petition. And this defendant has not sufficient knowledge or information to form a belief that the said bank suffered any loss, or that any loss has not been made good, or that the said bank held or holds no other bond or guaranty of surety for said loss.

Third. This defendant has no knowledge or information sufficient to form a belief that on July 11, 1894, or at any other time the said Jacob M. McKnight collected the amount of $252.09 or any other amount from the Columbia Finance & Trust Company, or that he misapplied the same or any part thereof to his own use and benefit, or that he never accounted to the bank therefor.

Fourth. The defendant has no knowledge or information sufficient to form a belief that the German national bank ever paid $1,000 or

any other sum on a check of S. E. Edmonds, as alleged in the said petition, or that the said McKnight paid or caused to be paid to the said S. E. Edmonds any sum upon any such check, or that said McKnight then knew that the said Edmonds had no funds in the said bank against which he was entitled to make checks, or that the said McKnight paid or caused to be paid the same, for the fraudulent purpose of willfully misapplying said amount or to defraud the bank of the same.

Fifth. The defendant says that it has no knowledge or information sufficient to form a belief that the said Jacob M. McKnight paid or caused to be paid M. A., D. A. and J. G. Sachs the sum of $1,253.00, or any other sum, on his own check on or about
11 Jan. 21, 1896, as alleged in the said petition, or that the said McKnight knew at the time that he had no funds in the said bank against which he was entitled to check, or that he fraudulently or willfully misapplied the funds of the said bank in the payment of the said check, or applied the same to his own use and benefit.

Sixth. The defendant has not sufficient knowledge or information to form a belief that the said Jacob M. McKnight paid F. A. Britt and J. W. Reeder, or either of them, the sum of $2,000 or any other sum, on a note executed by them, as alleged in the petition, payable to the order of themselves and endorsed by them or otherwise, or that said note was payable to the said German national bank, or that the said J. M. McKnight knew that the said Britt and Reeder were both insolvent, or that the said paper was worthless, or that he paid them any money for the fraudulent purpose of willfully misapplying said amount or any amount to his own use and benefit, or that of said Britt and Reeder, or for defrauding said bank of said money, or that it was without the knowledge and consent of the directors or of the exchange and discount committee.

Seventh. The defendant denies that it has sufficient knowledge or information to form a belief that in February or March, 1896, or at any other time, the said Jacob M. McKnight paid or caused to be paid, out of the funds of said bank, to M. A., D. A. and J. G. Sachs the sum of $1,650, or that any such payment was made or caused to be made for the fraudulent purpose of willfully misapplying said funds to his own use and benefit or that of the said Sachs, or that the same was paid upon the check of the said McKnight, or that said McKnight knew at the time that he had no funds in the said bank against which he was entitled to check, or out of which said check could be paid.

Eighth. The defendant has not sufficient knowledge or information to form a belief that the said Jacob M. McKnight drew a check on June 8, 1896, or at any other time, on the German national bank for $3,736.60, as alleged in the petition, or that the same was paid out of the funds of the said German national bank, or that the said McKnight knew, at the time he paid or caused the same to be paid, that he had no funds in the said bank against which he was entitled to draw said check or out of which the same could be paid, or that

he did pay or cause to be paid the same for the fraudulent purpose of misapplying said funds of said bank.

Ninth. The defendant says that it has not sufficient knowl-
12 edge or information to form a belief that the said Jacob M. McKnight paid or caused to be paid on Jan. 4, 1897, or at any other time, to the Union national bank the sum of $379.96 or any other sum, as alleged in the petition, or that said McKnight made any such check, or knew at the time that he had no funds in the said German national bank against which he was entitled to check or out of which said check could be paid, or that he fraudulently or with the intent to willfully misapply the funds of the said bank, or to convert the same to his own use and benefit, or that the Union national bank paid or caused to be paid any such check.

Tenth. The defendant has not sufficient knowledge or information to form a belief that the German Shoe Company ever executed any note or notes for $2,500, $1,000 or $900, or any other sum, as alleged in the said petition, or that the said notes were entitled to an offset of only $740.29, or that that was the correct amount to the credit of the shoe company on the date of the suspension of the said bank, or that the said McKnight was a stockholder or officer in the said German Shoe Company, or that he knew that said loans and each of them were made without the knowledge or consent of the board of directors of the said German national bank and the discount and exchange committee thereof, or that such loans or any of them were made out of the funds of said bank for the fraudulent purpose of wilfully misapplying the funds of said bank, or of converting the same to his own use and benefit, or that of the German Shoe Company.

Eleventh. The defendant has no knowledge or information sufficient to form a belief that on Nov. 21, 1896, or at any time, the said Jacob M. McKnight was indebted to the German national bank in the sum of $7,127.94, evidenced by a promissory note held by said bank, signed, "S E. Edmunds & Co.," as alleged in the petition, or that the said McKnight was a member of the firm of S. E. Edmunds & Co., or that the said McKnight caused the said Edmunds to execute to the German national bank a note, dated Nov. 19, 1896, payable on demand, for $2,127.94, or that he caused him to execute another note, dated Nov. 16, 1896, to the German national bank for $5,062.22, or that said McKnight did place said notes in said bank in lieu of the pretended note of $7,127.94, or that he withdrew any such note from the assets of said bank, or that he attempted to release himself from such note, or that the collaterals deposited to secure such notes would only realize the sum of $5,062.22, except $500.00, or that the plaintiff believes that he cannot realize
13 any more, or that the alleged change of such notes and the release of McKnight was done for the fraudulent purpose of defrauding said bank, or for his own use and benefit, or was without the knowledge of the directors and exchange and discount committee.

Twelfth. The defendant denies that it has sufficient knowledge or information to form a belief that the said J. M. McKnight executed

a demand note on the said German national bank for the sum of $1,000 on March 19, 1895, as alleged in the said petition, or that he caused it to be discounted, or that it was entirely worthless or was so known to the said McKnight, or that it was discounted without the knowledge or consent of the board of directors of the said bank or the discount and exchange committee thereof.

Thirteenth. The defendant denies that it has sufficient knowledge or information to form a belief that the said Jacob M. McKnight carried or caused to be carried in said bank such items, or any items, as alleged in the petition, viz., $25.00, 76.00, $25.00, $10.00, $15.00, $45.00 and $47.15, or that the proceeds of such items had been misapplied by the said McKnight without the knowledge or consent of the directors or of the exchange and discount committee.

Fourteenth. The defendant says that the bonds mentioned in the petition as having been executed by this defendant were never afterwards delivered to it, and this defendant has not sufficient knowledge or information to form a belief as to whether there were any specific terms and conditions of the said bond, except so much thereof as was contained in a printed form furnished by the defendant, and whether or not the specific terms and conditions were inserted in writing.

Wherefore, plaintiff prays to be dismissed, with its costs, and for all proper relief.

ST. JOHN BOYLE. *For Def't.*

Willis S. Mullen says that he is general agent of the defendant, and that he believes the statements in the foregoing answer to be true.

WILLIS S. MULLEN.

Sworn to before me by Willis S. Mullen this Nov. 17, 1897.

R. A. BATMAN,
N. P., J. Co., Ky.

My com. expires Jan'y 25, 1900.

14 And on the 19th day of April came the parties, by their attorneys. The court being now fully advised of the defendant's motion to file an amended answer herein, it is therefore considered by the court that said motion be and the same is hereby sustained, and said amended answer is now ordered filed.

Amended answer above referred to is as follows:

United States Circuit Court for the Sixth District of Kentucky.

R. H. COURTNEY, Receiver of the German National Bank,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Amended Answer.

Paragraph 15th. The defendant, The Fidelity & Deposit Company of Maryland, by leave of court, amends its answer herein and says: In the bond executed by the defendant to the German national bank

for the fidelity of J. M. McKnight, as president of said bank, and to the effect that defendant would hold said German national bank harmless from any loss caused by any fraudulent act or acts of said McKnight during the continuance of said bond while he was in the performance of the duties of the said office, it was expressly stipulated and agreed by the defendant and the said German national bank as follows: "That the said German national bank shall immediately give the company notice in writing of the discovery of any default or loss hereunder, and shall file with the said company his or their claim hereunder, with full particulars thereof, as soon as practicable thereafter, and no claim which shall not be so filed by the employer (German national bank) with the Fidelity & Deposit Company within six months after the expiration or cancellation of this bond, or within six months after the employé shall have ceased to be in the employer's service, shall be payable hereunder."

It was also expressly stipulated and agreed between this defendant and the said German national bank in said bond as follows: "That upon notification to the Fidelity & Deposit Company of any loss hereunder, the said Fidelity & Deposit Company's liability shall thereupon terminate as regards any subsequent act of the employé, J. M. McKnight."

"That the employer, the German national bank, shall observe due and customary supervision over the employé, J. M. McKnight, for the prevention of default, and if the employer, the German national bank, shall at any time during the currency of this bond condone any act or default on the part of the employé, McKnight, which would give the employer, the German national bank, the right to claim thereunder, and shall continue the employé, McKnight, in its service without written notification to the Fidelity & Deposit Company, the said Fidelity & Deposit Company shall not be responsible hereunder for any default of the employé, McKnight, which may occur subsequent to such act or default so condoned."

"That there shall be a complete inspection of the accounts and books of the employé, McKnight, on behalf of the employer, the German national bank, at least once in every twelve months from the date of this bond (June 1, 1894), such inspection to include examination of all cash and securities of which the employé, McKnight, shall have custody or charge."

"That the employé, McKnight, has not, within the knowledge of the employer, the German national bank, been at any time in arrears or default in either this or other employment."

"That the employer, the German national bank, shall at once notify the said company on becoming aware of the employé, McKnight, being engaged in speculation or gambling, or indulging in any disreputable or unlawful habits or pursuits."

"That the company may, upon giving one month's notice in writing to the employer, cancel its responsibility hereunder in so far as concerns the acts or defaults of the employé, McKnight, subsequent to the end of said month; *and* which event it will, upon request of employer, the German national bank, refund the proportion of the premium paid for the unexpired term of this bond."

All of the foregoing stipulations and agreements were made a part of said bond by the said German national bank and the said McKnight and this defendant; and without said stipulations and agreements, this defendant would not have entered into or executed said bond, and said McKnight and said bank knew this.

The defendant says that prior to January 21, 1896, said McKnight did indulge in speculation in whisky and tobacco, and in disreputable and unlawful habits and pursuits, and this was
16 known to the cashier and teller and vice-president of the said bank, the said vice-president being also a director, and to the other officers and directors of said bank and to said bank, but the said German national bank did not notify this defendant of any of such irregular and unlawful acts or improper conduct or defaults of said McKnight, and this defendant had no notice thereof for more than a year thereafter; and said bank condoned the acts and defaults and conduct of said McKnight without the knowledge or consent of this defendant, and continued him in office; and if defendant had learned of said acts of said McKnight it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

The defendant says that the act of said McKnight in executing and causing to be discounted by said German national bank the demand note of March 19th, 1895, for $1,000.00 executed by him and set out in the petition, was known at once to the teller and cashier and vice-president of said bank; and the directors of said bank knew of this act of his at once or within a few days thereafter, and acquiesced in and approved the same; and said German national bank did not notify this defendant of said acts or defaults of said McKnight for more than two years thereafter, and it acquiesced in and condoned the said acts and defaults of said McKnight without the knowledge or consent of this defendant, and continued him in office, and said bank did not file its claim against this defendant under said bond or make a demand of this defendant for said act or default of said McKnight with full or any particulars thereof as soon as practicable thereafter, nor until after February 1st, 1897.

The defendant says that the payment to S. E. Edmunds on his check on January 21, 1896, of $1,000.00 as set out in the petition was made by the teller and cashier of said bank, not by said McKnight, but at his request, and said payment of said check was immediately known to the vice-president and one or more other directors, and the whole transaction and the reasons for it were well known to said teller and cashier and vice-president, and to one or more of the directors immediately and in a few days thereafter became known to a majority of said directors and to said bank, and they acquiesced in or condoned the act or default of said McKnight, and all of said directors knew it and said bank knew it. But neither said bank nor any one of said directors ever notified this defendant thereof, and said bank never made a claim or demand against this defendant on account thereof until long after said bank was closed in
17 1897, and this defendant knew nothing of said transaction for more than a year thereafter.

Said teller and cashier, when he paid said check, knew, and so

did the vice-president, that S. E. Edmunds was insolvent, and had no funds to his credit in said bank; and if defendant had been informed of said transaction it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

Said sum of $1,253.00, which it is alleged in the petition was paid to M. A., D. A. & J. G. Sachs, by J. M. McKnight on January 21st, 1896, was in fact paid by the teller and cashier of said bank at the request of said McKnight, and on his check, and said payment on said day became known at once to the vice-president, and to one or more of the directors of said bank, and to said bank and all of said directors of said bank learned of it in a few days; and they acquiesced in and condoned the act or default of said McKnight without the knowledge or consent of the defendant, and continued him in office and never notified defendant thereof and never made a claim or demand of defendant on account thereof for more than a year; and if defendant had been informed of said transaction it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

The sum of two thousand dollars ($2,000.00), which, it is alleged in the petition, was paid to F. A. Britt and J. W. Reeder on their note February 6th, 1896, was in fact paid by the teller and cashier of said bank at the request of said McKnight, and said transaction became known on the night of that day to one other director of said bank, who was vice-president, and who did not take part therein, and to said bank, and in a few days thereafter all the other directors of said bank knew it; and said directors acquiesced in and condoned said act or default of said McKnight without the knowledge or consent of defendant, and they continued said McKnight in his office and never notified defendant of his said act or default, and never made any claim or demand on defendant on account thereof for more than a year; and if defendant had been informed of said transaction it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

The defendant says that the payment to M. A., D. A. & J. G. Sachs on the check of J. M. McKnight in February or March, 1896, for $1,650.00, as set out in the petition, was made by the teller and cashier of said bank, not by said McKnight, though at his request,
18 and said payment of said check was immediately known to the vice-president and one or more of the directors of said bank, and was known also to said bank immediately and in a few days thereafter became known to a majority of the directors of said bank, and the said bank acquiesced in and condoned the act or default of said McKnight, but neither the said bank nor any of the said directors or officers ever notified this defendant thereof, and said bank never made any claim or demand of this defendant on account thereof until long after said bank was closed in 1897; and this defendant knew nothing of said transaction for more than a year thereafter. Said teller and cashier and said vice-president and director and said bank knew what funds, if any, said McKnight had in said bank at said date, and knew whether he was overdrawn at the time or not.

The defendant says that the payment to the Union national bank on June 8, 1896, on the check of J. M. McKnight for $3,736.60, as set out in the petition, was made by the teller and cashier of said bank, not by said McKnight, but at his request, and said payment of said check was immediately known to the vice-president of said bank and one or more of the directors of said bank; and said bank knew of said matter at once, and said directors and officers of said bank acquiesced in and condoned the act or default of said McKnight without the knowledge or consent of the defendant, and continued him in office and never notified defendant thereof, and never made any claim or demand of defendant on account thereof for more than half a year, and if defendant had been informed of said transaction it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

The defendant says that the payment of $379.96 to the Union national bank on January 4, 1897, on the check of the said J. M. McKnight on the German national bank was paid to said Union national bank or on its order by the teller and cashier of said German national bank at the request of said McKnight and on his check; and said payment on said date became known at once to the said bank and to the vice-president and one or more of the directors of said bank, and all of said directors of said bank learned of it in a few days and they acquiesced in and condoned the act or default of said McKnight without the knowledge or consent of the defendant, and continued him in office and never notified defendant thereof, and never made any claim or demand of defendant for several months, and if defendant had been informed of said transaction it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

19 The defendant says that the loan to the German Shoe Company on April 6, 1895, on a demand note for $2,500.00, and the loan to the said German Shoe Company on October 30, 1895, on a demand note for a thousand dollars ($1,000.00), and the loan to the said German Shoe Company of January 2, 1896, on a ninety-day note of said company for nine hundred dollars ($900.00) were all made in due course of business by the said German national bank and with a regular customer who had for some time been doing business with said bank, and each of said loans was made with the knowledge and consent of the cashier and teller of said German national bank, and with the knowledge and consent of the vice-president of said bank, who was a director of said bank, and with the knowledge and consent of said bank itself, and each of said loans became known in a few days thereafter to all the directors of said bank and was reported to them within one week after each loan in the due course of business; and said directors acquiesced in and approved and condoned the act of said McKnight in lending said money to said German Shoe Company, and said directors gave their approval thereto without the knowledge and consent of defendant, and they continued said McKnight in office and never notified defendant of each of said loans to said German Shoe Company, and never made any claim or demand of defendant on account

thereof for more than a year thereafter, and if defendant had *had* been informed of said transaction and had been thus notified by the said bank, it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

The defendant says that the cancellation by said McKnight on November 21, 1896, of the promissory note held by said bank and signed by S. E. Edmunds and Company, and the acceptance by said McKnight of S. E. Edmunds of two notes to the German national bank, one of them being dated November 19th, 1896, and payable on demand for $2,127.94 and the other dated November 16th, 1896, to the German national bank and payable in sixty days for $5,062.22, was known immediately to the cashier and teller of said German national bank and the vice-president thereof, who was a director thereof, and to the bank, and became known within a week thereafter to all the directors of said bank, and they acquiesced in and approved and condoned the said act or acts or default of said McKnight, without the knowledge or consent of the defendant, and said bank continued said McKnight in office and never notified the defendant thereof, and never made any claim or demand of defendant on account thereof for four or five months thereafter, and if defendant had been informed of said transaction, it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

The defendant says that the sundry items carried and caused to be carried in said bank by said McKnight as cash items, namely, $25.00, $76.00, $25.00, $10.00, $15.00, $45.00 and $47.15, as set out in the petition, were so carried as cash items by the teller and cashier, and with the knowledge of the vice-president of said bank, who was a director thereof, and with the knowledge of said bank, and all of the officers and directors of said bank learned of said acts of said McKnight and said cashier and teller within a few days thereafter, and the said bank and the said directors acquiesced in and approved and condoned the acts or default of the said McKnight without the knowledge or consent of defendant, and continued him in office and never informed the defendant thereof, and never made any claim or demand of the defendant on account thereof for many months thereafter, and if defendant had been informed of any of said actions it would have discontinued and canceled and abrogated said bond at once, as it had a right to do.

The defendant says that the amount collected on July 11, 1894, as set out in the petition, by McKnight, as president of the German national bank, of $252.09 of the funds of said bank from the Columbia Finance & Trust Company, agents of Attilla Cox, assignee of J. G. Mattingly & Sons, on a claim owing by said J. G. Mattingly & Sons to said bank, was improperly collected by said McKnight, with the knowledge and consent of the cashier and teller of the German national bank, and with the knowledge and consent of the vice-president thereof, who was a director, and with the knowledge and consent of the said bank. Said McKnight had no power or authority to collect said sum, and did not collect the same as president of said German national bank, but as an individual, and he retained

the same, with the knowledge and consent of said bank and its officers, and they acquiesced in and condoned the act or default of said McKnight therein, without the knowledge or consent of this defendant, and continued him in office, and never notified the defendant thereof, and never made any claim or demand of defendant on account thereof for nearly three years, and if defendant had been informed of said transaction it would have discontinued and canceled and abrogated said bond of McKnight at once, as it had a right to do.

21 The defendant says that from June 1st, 1894, until said bank was closed in 1897 Rudolph Reutlinger was both teller and cashier of said German national bank. and as such had charge of such financial affairs of the said bank as pertained to said offices; that said Rudolph Reutlinger's father, namely, Adolph Reutlinger, from June 1st, 1894, to December 5th, 1896, was vice-president and director of said bank, and was daily and constantly in said bank and was thoroughly familiar with all its business affairs and with the acts and doings and defaults of said McKnight as president, and with the acts and doings of the teller and cashier of said bank; said Adolph Reutlinger had been president and director of said bank from 1874 to January 1st, 1895, that is, until said McKnight became president thereof, and said Adolph Reutlinger was president for six or seven months in 1894, while said McKnight was vice-president of said bank; said Adolph Reutlinger was an expert banker and had his office in said bank building until December 5, 1896, and was in and around the offices and banking-room of said bank every day and at all times of day.

The board of directors of said bank met weekly in the building of said bank and the commercial paper and notes and drafts discounted and loans made in said bank were known at once to the teller and cashier and vice-president of said bank, and were read out to said directors each week by the officers of said bank, and the overdrafts were read each week to said directors, as they well knew; and said overdrafts were always known at once to the teller and cashier, to the vice-president, who was a director, and were known in a week to all the directors.

Paragraph 16. From January 1st, 1894, till said bank was closed in January, 1897, the books thereof were out of balance, and the discrepancy amounted to several thousands of dollars, and this was well known to the officers and directors of said bank, but was not known to the defendant. Said books were out of balance about $3,000.00 when said McKnight was elected vice-president on April 18th, 1894, and also when he was elected president in January, 1895, and this continued during all the time he was president, but this was not known to defendant until after said bank was closed in 1897; and if defendant had known of this improper and dangerous condition of said books, which offered additional temptations to the officers for illegal and improper acts and defaults, it would not have become surety on said bond, and, if it had learned of these facts after the execution of said bond, it would have canceled and revoked same at once, as it had a right to do.

22 Paragraph 17. Prior to January 1st, 1896, said McKnight was frequently allowed by said German national bank to overdraw to a large amount his personal account in said bank, and on January 18th, 1896, his overdraft amounted to $1,340.14, on January 20th, 1896, he was overdrawn $1,460.14, and on June 8th, 1896, he was overdrawn $626.23, and on September 11, 1896, $431.57, and constantly, both before and after said dates, he was overdrawn to a large amount, and these irregular acts and defaults of said McKnight were known at the time by the cashier and teller and vice-president and by the directors of said bank, and were acquiesced in and condoned by said directors, who never notified the defendant thereof, and they continued him in office without the knowledge of the defendant of his said acts or defaults, and the defendant never learned thereof until long after said bank was closed in January, 1897.

By their irregular and improper practices the directors of said bank encouraged said McKnight in violating and neglecting his duty as president, and they condoned his misconduct and withheld said information from the defendant, and this defendant would have canceled said bond, and would not have remained upon his bond if it had known of his said misconduct.

The defendant says that the German national bank did not observe or cause to be observed due and customary supervision over the said J. M. McKnight for the prevention of his default or to prevent him from doing any improper act that would cause loss to said bank or to this defendant, but, on the contrary, said bank recklessly and knowingly allowed him to perform duties and to do acts that did not properly appertain to the office of president of said bank; and said bank, when it learned of his irregular and improper acts and defaults, constantly and knowingly acquiesced therein and condoned his wrongful acts, and continued him in his office, and, in spite of such knowledge, re-elected him again and again, and never notified this defendant of any of his improper or wrongful acts, or of any of his defaults, and this company never learned thereof until long after January 17th, 1897. The officers and directors of said bank allowed him to run the affairs of said bank as he pleased, and they did not carefully inspect his transactions, accounts and books at least once in every twelve months, and did not inspect and examine the cash and securities and notes and drafts of which he had custody or charge, or to which he had access. When said bond of June 1st, 1894, given by defendant to said bank for the fidelity of said McKnight, as set out in
23 the petition, was renewed for another year on June 1st, 1895, to cover the period from that date to June 1, 1896, and was again renewed and continued on June 1st, 1896, to cover the period from that date to June 1st, 1897, said bank, through an officer other than said McKnight, represented and asserted and certified, with the knowledge of the directors of the said bank, that the books and accounts of said McKnight had been examined by said bank and were then found to be correct in every respect, and that all moneys handled by him had been accounted for up to that time, and that

he had performed his duties in an acceptable and satisfactory manner, and that said bank knew of no reason why the guaranty bond executed by this defendant should not be continued; but defendant says that, in fact, said statements, assertions, and certificates were, and each of them was, false and fraudulent, and known by said bank to be false and fraudulent, but the defendant did not know the same to be false or fraudulent, and, on the contrary, the defendant believed and relied on said statements and each of them, and but for said statements, assertions, and certificates, the defendant would not have renewed or continued said bond on June 1st, 1895, or June 1st, 1896, and the defendant would immediately have canceled and revoked said bond, as it had a right to do, and as the said bank knew it had a right to do. The said bank purposely withheld from the defendant the proper information as to the acts and conduct and accounts of said McKnight, and thus misled and deceived the defendant.

Wherefore, the defendant prays to be hence dismissed with its costs herein, and for all proper and general relief.

ST. JOHN BOYLE AND
EDWARD J. McDERMOTT,
Attorneys for Defendant.

Willis S. Mullin says that he is the general agent of the Fidelity and Deposit Co. of Maryland in this city and State; that he has charge of all of the business of said company in this city and State, and has authority to represent it, and that the statements of the foregoing answer are true.

WILLIS S. MULLIN.

Subscribed and sworn to by Willis S. Mullin before me this 18th day of April, 1899.

THOS. SPEED, *Clerk*,
By HENRY F. CASSIN, *D. C.*

24 And on the 1st day of May, 1899, came the plaintiff, by W. M. Smith, his attorney. Came also defendant, by St. John Boyle and E. J. McDermott, its attorneys. The parties, by their said attorneys, filed their written agreement herein, which is as follows: "It is hereby agreed that the first paragraph of the defendant's answer filed herein, be and the same is hereby withdrawn—said paragraph being as follows: 'That it is a corporation organized under and by virtue of the laws of the State of Maryland, and a resident thereof, and a resident of the United States, district of Maryland, and is not a resident or inhabitant of the district of Kentucky, and that the circuit court of the United —, in and for the district of Kentucky, has no jurisdiction in this action.'" Came again the plaintiff by his said attorney and filed his reply herein. Came again the parties and thereupon the defendant moved the court to strike out from the reply the following clause: "That he has never seen said bond and does not know the specific terms and conditions thereof; that he has not knowledge or information sufficient to form

a belief as to whether or not said terms and conditions set out in defendant's amended answer or any of them are included in the said bond or made a part thereof." And by consent of the plaintiff it is ordered that said motion be and the same is hereby sustained and said parts are stricken from said reply. Came the defendant by its attorneys and filed its amended answer herein, and by consent of parties it is ordered that the affirmative allegations of said amended answer are controverted of record.

Thereupon came a jury, to wit: Robert Redman, John W. Fair, Frank G. Gault, H. F. Lion, Wm. T. Jasper, James E. Breed, Charles A. Hilger, Z. W. Clore, James Walters, W. L. Purcell, M. J. Winn and E. S. Tuley, who were elected, tried and sworn to well and truly *tried* the issue joined. On motion it is ordered that W. C. Furnas be and he is hereby appointed stenographer herein.

The evidence was heard in part, and there not being time to conclude same today, time is given until tomorrow. It is ordered that the jury do adjourn until tomorrow morning at 9½ o'clock.

Reply above referred to is as follows:

United States Circuit Court for the Sixth District of Kentucky.

R. H. COURTNEY, Receiver of the German National Bank, Plaintiff,
vs.
THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND, Defendant.
} Reply.

The plaintiff, R. H. Courtney, receiver of the German national bank, in reply to the amended petition filed herein, says that he has not the original bond filed herein, and having made diligent search therefor, he is unable to find same, that same was returned to defendant when the renewal receipts were given, or is lost or misplaced so that it cannot be found, and plaintiff does not know which of these allegations is true, but one of them is. That he has never seen said bond, and does not know the specific terms and conditions thereof, that he has not knowledge or information sufficient to form a belief as to whether or not said terms and conditions set out in defendant's amended answer, or any of them are included in said bond, or made a part thereof, or whether or not without said stipulations defendant would not have entered into or executed said bond or that said J. M. McKnight or said bank knew this.

Plaintiff says that he has no knowledge or information sufficient to form a belief as to whether or not prior to January 21, 1896, J. M. McKnight indulged in speculation in whisky or tobacco or in disreputable and unlawful habits, or pursuits; he denies that the cashier or teller or vice-president of the German national bank or the directors of said bank had any such knowledge in regard to said McKnight or that said bank condoned any such acts, defaults or conduct of said McKnight, except they have lately obtained information as alleged in petition herein, and plaintiff has no knowledge or

information sufficient to form a belief as to whether or not defendant, if it had learned of said fact, would have canceled said bond.

Plaintiff denies the execution, and discounting in said bank by J. M. McKnight, of his note for $1,000.00, dated March 19th, 1895, was known at once to the teller or cashier or vice-president of
26 said bank, or that the directors of said bank knew of same at once, or within a few days thereafter, or that said officers or directors, or any of them, knew of the same until just a short time before said failure, and then only the teller learned that such a note had been discounted, but no further. That the facts and circumstances of said discounting were not known or learned by said teller or any of said officers or directors until some time after the bank went into the hands of a receiver; that said note was discounted by said J. M. McKnight as president, who had authority to discount paper, and the fact thereof was concealed by him from said bank, he causing said note to be carried in the discount loans as demand loan. He denies that said bank or any of its officers or directors, acquiesced in or approved same, or condoned same, and that said bank by this receiver presented a claim therefor proven against this company as soon as practicable after discovery.

Plaintiff denies that the payment to S. E. Edmunds on his check on January 21st, 1896, of $1,000.00 was immediately known to the vice-president, or any one of the directors of said bank, or that the whole transaction, or the reasons for it, were known to said teller, cashier, vice-president or to any one or more of said directors, or to said bank, or that they acquiesced in or condoned the acts or defaults of said McKnight, or that all, or any of said directors, or said bank knew it. A claim therefor was made by this plaintiff of this defendant shortly after same was learned, and as soon thereafter as practicable and within six months. Plaintiff denies that when said teller and cashier paid said check, he or the vice-president knew that S. E. Edmunds was insolvent, or had no funds to his credit in said bank.

Plaintiff has no knowledge or information sufficient to form a belief as to whether or not defendant would have canceled said bond had it been informed of the facts.

Plaintiff denies that the $1,253.00 paid to M. A., D. A. and J. G. Sachs by J. M. McKnight on January 21, 1896, was paid by the teller and cashier of said bank, but same was paid through the clearing-house, on the check of said McKnight, and he denies that said payment became known at once *known* to the vice-president, or to any of the directors of said bank or to said bank, or that all or any of said directors learned of it in a few days, or that they acquiesced in or condoned the acts or defaults of said McKnight, plaintiff says that said officers of said bank did not learn of said check or the facts or circumstances of said transaction until said bank passed into
27 the hands of the receiver, and said receiver made claim for said claim of defendant, as soon as practicable after he received said knowledge and within six months thereof.

Plaintiff denies that the two thousand dollars paid to F. A. Britt and J. W. Reeder on their note of February 6th, 1896, became

known to the vice-president on the night of that day. He says that he is informed, and believes, and so states and charges that some short time thereafter said payment became known to the vice-president and some of the directors, but that McKnight informed them that it was a legitimate loan made by him to said parties, by discounting said note, that said parties were perfectly good and solvent, but that he (McKnight) would have other parties to sign said note, as further security, and that they had promised to do same.

That said officers believed and relied on said statements. He denies that any of said officers ever knew the facts and circumstances of said loans until after the bank was placed in the hands of a receiver, and he denies that the bank or said officers acquiesced in or condoned any said acts or defaults of said McKnight, and this receiver made claim for same of defendant as soon after said matter was learned of and the facts and circumstances of same, as practicable and within six months thereafter.

He denies that the payment of $1,650.00 on the check of J. M. McKnight in February or March, 1896, to M. A., D. A. and J. G. Sachs was made by the teller and cashier of said bank—but same was paid through the clearing-house, or that said payment was immediately known to the vice-president or any of said directors or to said bank immediately, or that within a few days thereafter, it became known to a majority of said directors, or that said bank acquiesced in or condoned said acts or defaults of said McKnight. He says that said matter was not known to said bank or its officers until after said bank was placed in the hands of a receiver, and this receiver as soon thereafter as practicable and within six months thereafter, made claim therefor of this defendant. He denies that said teller and cashier or vice-president or any directors or said bank knew what funds McKnight had in said bank at that time, or knew whether or not he was overdrawn.

He denies that the payment made to the Union national bank June 8th, 1896, on the check of J. M. McKnight, of $3,736.60, was made by the teller and cashier of said bank, but same was 28 paid through the clearing-house. He denies that said payment was immediately known to the vice-president, or any of said [illegible]ors of said bank, or that said bank knew of it at once, or tha[illegible]irectors, or officers of said bank, acquiesced in or condone[illegible]cts or defaults of said McKnight. He says that neither said ba[illegible]or its officers knew of said matter, or the facts and circumstances thereof, until after said bank had passed into the hands of a receiver, and then said receiver, within six months thereafter, and as soon as possible, made claim therefor of defendant.

Plaintiff denies that the $379.96 paid to the Union national bank on January 4th, 1897, was paid by the cashier and teller of said bank, but same was paid through the clearing-house. He denies that said payment became known at once to said bank, or to the vice-president, or any of the directors of said bank, or that all of the directors of said bank learned of it in a few days or that they acquiesced in or condoned the said acts or defaults of said McKnight. He says that neither said officers, or said bank knew of said matter

or the facts and circumstances thereof, until after the receiver took charge of said bank, and then said receiver made claim for said amount of defendant within six months thereafter, and as soon as practicable.

Plaintiff denies that the cancellation by McKnight on November 21st, 1896, of the promissory note held by said bank and signed by S. E. Edmunds & Company, and the acceptance by said McKnight of S. E. Edmunds' two new notes to the German national bank, one of them being dated November 19th, 1896, and payable on demand for $2,127.94, and the other dated November 19th, 1896, to the German national bank and payable in sixty days for $5,066.22 was known immediately to the cashier and teller of said German national bank, or to the vice-president thereof, or that it became known within a week thereafter to all, or any of the directors, or that they acquiesced in, approved or condoned the said act, or acts, or defaults of said McKnight. He says that said acts were not known to said officers of said bank, or said bank until after said bank passed into the hands of a receiver, and that as soon as they were learned, said receiver, as soon thereafter as practicable, and within six months thereafter, made claim for same against defendant. He says that said McKnight was the company in said firm of S. E. Edmunds & Company, to whom the money was loaned, and who signed said note; that said McKnight made the loan himself, without the knowledge or consent of the directors, or said bank. That
29 neither said bank or its officers or directors knew that said McKnight was a member of said firm until after the bank went into the hands of a receiver.

He denies that the sundry items carried in cash items were so carried with the knowledge or consent of the vice-president or with the knowledge of said bank or that all of the officers and directors of said bank learned of said acts until after said bank was placed in the hands of the receiver, and as soon thereafter as practicable, and within six months thereof, said receiver made claim therefor of defendant. That said McKnight so concealed said item from said bank, and its directors, and so confessed his account against said bank for salary, and kept the entries thereof, in such a manner, that neither said bank or its directors could tell the state of his account with the bank, and did not know the same, until after the receiver took charge of said bank.

Plaintiff says that it is true that the $252.09 collected July 11, 1894, of the assignee of J. G. Mattingly and Sons, was collected by said McKnight as vice-president and is not covered by the bond herein sued on, and same was included in said claim by mistake, but he denies that same was collected with the knowledge or consent of the cashier and teller of said bank, or the vice-president thereof, or that he retained the same with the knowledge or consent of said bank, or its officers, or that they acquiesced in, or condoned said act, or default of McKnight, or that they knew of same, or that same had not been accounted for by McKnight until after the bank passed into the hands of the receiver.

He denies that Rudolph Reutlinger, as teller and cashier of said

bank, had charge of such financial affairs of said bank as pertained to said officers, except under the immediate control and personal direction of said J. M. McKnight as president of said bank. He denies that Adolph Reutlinger, vice-president, was familiar with all the business affairs of said bank, or with the acts or doings, or defaults of said McKnight, as president, or with the acts and doings of the teller and cashier of said bank, or that he was around said bank every day, or at all times of the day. He says that the commercial paper, notes, drafts, discounts and loans made in said bank were known at once to the teller and cashier and vice-president of said bank, and were read out to said directors by the officers of said bank, except such as were withheld and concealed by said J. M. McKnight from them, or falsely reported to them by him, and of which they had no knowledge or information. He says that the overdrafts were frequently during each year read or reported to them, by the officers of said bank, and were known to the teller and cashier, vice-president and directors, except such as were withheld by said McKnight from the books of the bank, and concealed by him from them, or such as were caused to be entered by McKnight, to other accounts than those to which they belonged, or were falsely reported by him to them.

Plaintiff denies that from January 1st, 1894, till said bank was closed in January, 1897, the books thereof were out of balance, or that the discrepancy amounted to several thousand dollars, or that this was well known to the officers or directors of said bank. He denies that said books were out of balance $3,000 when said McKnight was elected vice-president on April 18th, 1894, or when he was elected president in January, 1895, or that this continued all the time he was president. He says that only one book, that was the Individual Ledger "A," was ever out of balance, and this was caused by the failure to make and carry forward some entries, was simply a mistake and oversight of the clerk of said book and as soon as the fact was ascertained the errors were sought for, found and corrected.

Plaintiff denies that the overdraft of McKnight, or any irregular acts or defaults of his, were known at the time by the cashier and teller or vice-president, or by the directors of said bank, or were acquiesced in, or condoned by said directors. He denies that by any irregular or improper practices, the directors of said bank encouraged said McKnight in violating and neglecting his duty as president, or that they condoned any of his misconduct or withheld any of said information from defendant.

He denies that the German national bank did not observe, or cause to be observed, due and customary supervision over the said McKnight for the prevention of his default, or to prevent him from doing any improper act, that would cause loss to said bank or to defendant, or that said bank recklessly and knowingly allowed him to perform duties or to do acts that did not properly appertain to the office of president of said bank, or that said bank when it learned of his irregular or improper acts, or defaults, knowingly acquiesced therein, or condoned his wrongful acts. He denies that

the officers or directors of said bank allowed him to run the affairs of said bank as he pleased or that they did not carefully inspect his transactions, accounts and books once in every twelve months, or did not inspect, or examine the cash, and securities, and
31 notes, and drafts, of which he had custody or charge, or to which he had access. He says such inspection was made at least once in every twelve months from the date of the bond, on behalf of the employer, both by said employer and by the examiner of the Comptroller of the Currency of the United States, in connection with said employer, and on behalf of said employer, as well as said comptroller.

Plaintiff says that he has no knowledge or information sufficient to form a belief as to whether or not, when said bond of June 1st, 1894, given by said defendant to said bank, was renewed of June 1st, 1896, said bank, through an officer other than said McKnight, represented, or asserted, or certified, either with or without the knowledge of the directors of said bank, that the books or accounts of said McKnight had been examined by said bank and were then found to be correct in every respect, or that all money handled by him had been accounted for up to that time, or that he had performed his duty in an acceptable and satisfactory manner, or that said bank knew of no reason why the guaranty bond executed by this defendant should not be continued; he therefore denies said entire allegation. He denies that said bank made any statement, assertion, or certificate, that was either false or fraudulent, or that was known by said bank to be either false or fraudulent. He has no knowledge or information sufficient to form a belief as to whether or not said defendant relied on any such statement, assertion or certificate, or that but for same, would not have renewed said bond.

He denies that said bank purposely withheld, or withheld at all, from the defendant the proper information as to the acts or conduct, or accounts, of said McKnight, or thus misled or deceived defendant. He says that said bank did not withhold from defendant any knowledge it had as to any wrongful or fraudulent act *act* or default, or any improper conduct of his. He says that said McKnight remained in the employ of said bank as its president under said bond as renewed until January 18th, 1897, when said bank was placed in the hands of a receiver. That immediately upon the discovery of each and every one of the losses and defaults herein sought to be recovered, he gave defendant due notice of same, and proof of each of said losses and defaults sought herein to be recovered was on the 2nd day of July, 1897, made out and presented said defendant, as required, plaintiff making claim of it, of all of said accounts of said losses and defaults, and defendant was present during said investigation by a general agent, and knew of said discoveries as
32 made, and talked with plaintiff about same and waived further notice thereof from plaintiff; that none of said losses or defaults sought to be recovered herein were found out by said bank or its directors until some time after plaintiff was appointed receiver herein.

That from June, 1894, up to the time a receiver for said bank was appointed in January, 1897, said J. M. McKnight drew a salary from said bank of $4,500 per annum. That during said entire time he so drew his salary himself, by way of check, entries and cash items, and so concealed said items and entries and confused account, that said bank did not know the state thereof, or of any of said overdrafts. He says that the said various checks given by said McKnight to M. A., D. A. and J. G. Sachs and the Union national bank, and other checks given by him, all of which — and ought to be recovered herein, he, the said McKnight, caused the clerks of said bank to so hold them in the cash items, and to then charge them up to other accounts in said bank not his own, such as the Louisville Deposit Bank collateral account, Williams' special, Edmunds & Company account, and other accounts, so that the bank did not discover them, or their payment or said loss or default until long after the bank was placed in the hands of a receiver, and when same was learned notice thereof was given immediately to defendant. He says that as to the German Shoe Company note, he finds that defendant is correct. That at the time plaintiff included same in his proof of claim against defendant he was misinformed in regard to the facts thereof, but he denies that if defendant, had been informed of said transaction, — would have canceled said bond, or that by reason thereof it would have had the right to do so.

And now having replied, he prays as in his original petition herein.

R. H. COURTNEY,
Receiver German National Bank.

Subscribed and sworn to before me, this 2nd day of May, 1899.
THOS. SPEED, *Clerk.*
W. M. SMITH,
Att'y for Pl'ff.

33 Amended answer filed on May 1st, 1899, is as follows:

United States Circuit Court for the Sixth District of Kentucky.

R. H. COURTNEY, Receiver German National Bank,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

Amended Answer.

The defendant, by leave of court, amends its answer herein, and says that the German national bank and its officers had immediate knowledge and notice of the doing of each of the acts or defaults of said J. M. McKnight set out in the petition and on which the plaintiff seeks to recover herein; and said bank and its officers had notice of each of said McKnight's acts, doings and defaults at the very time when his said acts, doings or defaults occurred, or within a few days thereafter, and the said bank and its officers immediately approved or condoned each of said acts, doings or defaults of said

McKnight without the knowledge or consent of defendant; and defendant was not given and did not have any notice of any one of said acts, doings or defaults of said McKnight set out in the petition with full or any particulars thereof as soon as practicable thereafter, nor until July 6, 1897, and no claim on account of any one of said acts, doings or defaults of said McKnight was ever made on or filed with defendant by plaintiff or by said bank until said date, though said bank and the plaintiff knew specifically of said acts, doings and defaults prior to January 22, 1897, and said bank knew specifically of many of them prior to January 22, 1896, and knew of many of them prior to May, 1895.

Wherefore defendant prays to be hence dismissed, with its costs herein.

BOYLE & McDERMOTT,
Attorneys for Defendant.

The statements of the foregoing answer are true.

WILLIS S. MULLIN,
Gen. Ag't & Att'y-in-fact.

Subscribed and sworn to by —— —— before me this 1st day of May, 1899.

THOS. SPEED, *Clerk.*

34 And on May 2nd, 1899, came the parties again, by their attorneys. Came also the jury pursuant to order of adjournment. The evidence and arguments of counsel were concluded, and the court having delivered its instructions to the jury, they retired to consider of their verdict, and returned into court and reported that they were unable to agree upon a verdict today, and time is given them until tomorrow. It is ordered that the jury be adjourned until tomorrow morning at 9 o'clock.

And on 3rd day of May, 1899, came again the parties, by their attorneys. Came also the jury, pursuant to order of adjournment. The jury retired to consider of their verdict, and returned into court the following verdict, to wit:

We, the jury in this case, find for the plaintiff in the sum of ten thousand dollars, $10,000, and interest from the 3rd day of October, 1897.

E. S. TULEY, *Foreman.*

It is therefore considered by the court that the plaintiff, R. H. Courtney, receiver of the German National Bank of Louisville, recover of the defendant, The Fidelity and Deposit Company of Maryland, the sum of ten thousand dollars ($10,000), the sum so found due by the jury in their verdict aforesaid, with interest thereon at the rate of six per centum per annum from the 3rd day of October, 1897, until paid; also his costs herein expended.

And on the 4th day of May, 1899, came the defendant, by St John Boyle, its attorney, and on its motion, it is ordered that it do have until June 1st, 1899, within which to prepare and file its bill of exceptions herein.

And on the 1st day of June, 1899, came the defendant, by counsel, and on its motion, it is ordered that time be extended until June 3rd, 1899, to prepare and file its bill of exceptions herein.

And on the 3rd day of June, 1899, came the defendant, by St. John Boyle & E. J. McDermott, its counsel, and tendered its bill of exceptions herein.

35 And on the 13th day of July, 1899, came the defendant, by its attorneys. The court now signs and seals the bill of exceptions tendered herein June 3rd, 1899, and orders the same to be made part of the record, which is accordingly done.

Bill of exceptions is as follows:

United States Circuit Court, Sixth Circuit and District of Kentucky.

R. H. COURTNEY, Receiver, etc., Complainant,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant. } No. 6654.

Bill of Exceptions.

For plaintiff: Hon. W. M. Smith.
For defendant: St. John Boyle and E. J. McDermott, Esq.

Be it remembered, that heretofore the above-entitled cause came on for trial on the first day of May, 1899, at a stated term of the United States circuit court for the district of Kentucky, before his honor Walter Evans, district judge, and the jury having been empaneled and sworn, the plaintiff introduced evidence conducing to prove the following facts, viz:

That Adolph Reutlinger had for many years been president and director of the German National Bank of Louisville, Ky., and that on the — day of April, 1894, Jacob M. McKnight was elected vice-president and manager thereof; and that the said Jacob M. McKnight, with the Fidelity & Deposit Co. of Maryland as surety, on the 1st day of June, 1894, executed and delivered to the said bank a bond for the faithful performance of his duties as such officer; that the said bond had been lost or mislaid, and could not be produced, but the said obligation was upon a printed form, and a copy of which, with the names and dates blank, but covering a period of one year from date, was produced and read in evidence, and which copy is as follows:

36 "Banks.

"*Bond No.* —.

"Fidelity and Deposit Company of Maryland; home office, Baltimore, Md.

"Amount, $—. Annual premium, $—.

"Know all men by these presents, that —— —— (hereinafter called the 'employee'), and the Fidelity and Deposit Company of Maryland (hereinafter called the 'company') are held and firmly bound unto —— —— (hereinafter called the 'employer') in the sum of — dollars, lawful money of the United States of America, to be paid to the said employer, his or their certain attorney, executors, administrators, assigns, or successors, to which payment well and truly to be made, we and each of us do bind ourselves, respectively, and our respective heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

"Sealed with our seals and dated the — day of ——, anno Domini one thousand eight hundred and ninety —.

"Whereas, the employee has been appointed in the service of the employer, and has been assigned to the office or position of — by the employer, and application has been made to the Fidelity and Deposit Company of Maryland for this bond;

"And, whereas, the said employer has delivered to the company a certain statement, and it being agreed and understood that such statement constitutes an essential part of the contract hereinafter expressed:

"Now, therefore, in consideration of the payment of the sum of — dollars, lawful money of the United States of America, to the company as a premium for the term commencing at the date hereof and ending on the — day of ——, eighteen hundred and ninety —, at 12 o'clock noon, the company does hereby agree that it will, within three months after receipt of proof satisfactory to its directors, and subject to the conditions hereinafter expressed, reimburse the employer to an amount not in excess of the penalty of this bond, for such pecuniary loss as the employer shall have sustained by any fraudulent act or acts committed by the employee during the continuance of this bond, in the performance of the duties of his said office or position, or of such other position as he may be subsequently appointed to or called upon to fill by the employer in said
37 service, 'of money, securities or other personal property belonging to the employer, or for which the employer is responsible.'

"This bond may be continued from year to year, at the option of the employer, at the same or an agreed premium rate, so long as the company shall consent to receive same, in which case the company shall remain liable for any dishonest act of the employee occurring between the original date of this bond and the time to which it shall have been continued.

"This bond is issued and continued upon and subject to the following conditions and provisions:

"That the actual payment of the premium and its acceptance by the company, for either the issue or continuance of this bond, is essential to its currency, and a condition precedent to a right to claim hereunder.

"That the employer shall immediately give the company notice in writing of the discovery of any default or loss hereunder, and shall file with the company his or their claim hereunder, with full particulars thereof, as soon as practicable thereafter, and no claim which shall not be so filed by the employer with the company within six months after the expiration or cancellation of this bond, or within six months after the employee shall have ceased to be in the employer's service, shall be payable hereunder.

"That if the employé leave the service of the employer during the currency of this bond, for any cause whatever, the bond shall there-on expire, and the company shall be notified in writing by the employer, and the amount of unearned premium shall be refundable to the employer on application, and no claim which shall not have been made on the company within six months after the employee leaves the service, during such currency, shall be valid or recoverable hereunder.

"That upon notification to the company of any loss hereunder, the company's liability shall thereupon terminate as regards any subsequent act of the employee.

"That the employer shall observe, or cause to be observed, due and customary supervision over the employee for the prevention of default; and if the employer shall at any time during the currency of this bond condone any act or default on the part of the employee which would give the employer the right to claim hereunder and shall continue *to* the employee in its service without written notification to the company, the company shall not be responsible hereunder for any default of the employee which may occur subsequent to such act, or default so condoned.

38 "That the employee shall not be required or permitted to perform permanently the duties of a dual capacity in the service of the employer which would admit of the possibility of fraud by false entries and absence of check by another officer.

"That there shall be a complete inspection of the accounts and books of the employee on behalf of the employer at least once in every twelve months from the date of this bond, such inspection to include examination of all cash and securities which the employee shall have custody or charge.

"That the employee has not, within the knowledge of the employer, been at any time in arrears or default in either this or other employment.

"That the employer shall at once notify the company on becoming aware of the employee being engaged in speculation or gambling, or indulging in any disreputable or unlawful habits or pursuits.

"That if the employer shall at any time hold concurrently with this bond any other bond or guarantee or security from or on behalf of the employee, the employer shall be entitled, in the event of loss by default of the employee, to claim hereunder only such proportion of the loss as the amount covered by this bond bears to the whole amount of security carried on the employee's behalf.

"That the company may, upon giving one month's notice in writing to the employer, cancel its responsibility hereunder, in so far as concerns the acts or defaults of the employee subsequent to the end of such month; in which event it will, upon request of the employer, refund the proportion of the premium paid for the unexpired term of this bond.

"That no suit or proceeding at law or in equity shall be brought to recover any claim under this bond unless the same shall have been commenced within twelve months (365 days) from the date of the first notification by the employer to the company of any loss hereunder.

"That it is essential to the validity of this bond that the employee's signature be hereunto subscribed and witnessed.

"That the employer shall at any time, upon the request and at the expense of the company, afford and render all information, evidence and assistance capable of being afforded by the employer, for the purpose of prosecuting and bringing to justice the employee for any criminal offence committed by him involving liability of the company hereunder, or for the purpose of enabling the com-
39 pany to procure reimbursement by the employee, or his estate, of any sum paid by, or recoverable from the company under this bond.

"And the employee doth hereby for himself, his heirs, executors, and administrators, covenant and agree to and with the company, that he will save, defend and keep harmless the company from and against all loss and damage of whatever nature or kind, and from all legal and other costs and expenses, direct or incidental, which the company shall or may at any time sustain, or be put to, for, by reason, or in consequence of the company having entered into this bond, whether before or after, any legal proceedings by or against it to recover hereunder, and without notice to him thereof. And in any suit or proceeding by the company to recover any sum of money from the employee, or from his estate, on account of any claim hereunder, the amount which the employer shall have claimed under this bond shall, until controverted by sufficient proof, be held to be the amount due by the employee to the company.

"And lastly, should the employee become a defaulter and seek refuge in any foreign country he hereby agrees to the enforcement against him of the laws of such country as they are now, or may be hereafter enacted, relative to the commission of injuries or offences against an employer resident in such country.

"In witness whereof the said —— —— (the employee) hath hereunto set his hand and seal, and the company has caused this

bond to be signed by its president and its —— —— and its seal to be hereunto affixed the day and year first above written.

—— ——, *Employee.*
—— ——, *President.*

"Signed, sealed and delivered by the said employee in presence of—

—— ——.
—— ——.

"Ex'd and ent'd — ——.

—— ——, *Secretary.*"

Evidence was further introduced conducing to prove that on the first day of January, 1895, the said Jacob M. McKnight was elected president in place of said Adolph Reutlinger, who became
40 the vice-president, and continued as such vice-president and as director till September 5, 1896. And afterwards the said bond was, on the first day of June, 1895, renewed, and the renewal was given therefor in words and figures as follows:

"No. 2360.

"Security department.

"Amount, $10,000.00. Premium, $40.00.

"Fidelity & Deposit Company of Maryland; home office, Baltimore, Md.

"In consideration of the sum of forty dollars, the Fidelity and Deposit Company of Maryland hereby guarantees the fidelity of Jacob McKnight, president, in the sum of ten thousand dollars, in favor of the German national bank, Louisville, Ky., from the first day of June, 1895, to the first day of June, 1896, subject to all the covenants and conditions set forth and expressed in the bond of this company, No. 5002, heretofore issued on the first day of June, 1894.

[SEAL.] "E. W. WARFIELD, *President.*
"THOS. L. BERRY,
"*Acting Secretary.*"

That afterwards, on June 1, 1896, it was renewed for another year by a receipt similar to the foregoing, with the exception of the dates.

There was testimony conducing to show that on March 11, 1895, Adolph Reutlinger, as vice-president of the German national bank, wrote a letter to Herman E. Bosler, the secretary and treasurer of the defendant, relative to the bond of the said McKnight, and counsel for defendant offered to read said letter as evidence to the jury, to which the complainant's counsel objected, and the court sustained said objection and refused to allow said letter to be read, to which defendant's counsel excepted. Said letter is in words and figures as follows:

"J. M. McKnight, president; Adolph Reutlinger, vice-president; R. E. Reutlinger, cashier.

"No. 2062.

"German national bank.

"LOUISVILLE, KY., *March* 11, 1895.

"Herman E. Bosler, sec'ty & treas., Fidelity & Deposit Company of Maryland, Baltimore, Md.

"DEAR SIR: In answer to your esteemed favor of the 5th
41 inst., beg to state that we were examined by U. S. examiners on October 20, 1894.

"We have about three examinations by the Government a year, and also have frequent periodical examinations.

"We also beg to notify you that our former vice-president and manager, Mr. J. M. McKnight, was, in January last, elected to the presidency of this bank, upon the resignation of the undersigned as such. As far as the management of the bank is concerned, Mr. McKnight's duties are now identically the same as they were when he was vice-president and manager.

"Will there be any change necessary in his bond? Kindly advise us, and oblige,

"Yours very respectfully,

"ADOLPH REUTLINGER, *Vice-Pres't.*

"Dictated."

And the plaintiff introduced further evidence, testifying that the complainant, R. H. Courtney, had been, on the 18th day of January, 1897, appointed receiver of the said German national bank by the comptroller of the Treasury, and as such, had taken possession of the assets of the said bank and assumed to perform the duties of such receiver on January 22nd, 1897. And the said R. H. Courtney, receiver, and the plaintiff herein, being introduced, testified that he had assumed such duties, and that he had notified the defendant, The Fidelity and Deposit Company of Maryland, as follows:

"My first notice to the Fidelity & Deposit Company as to the defalcation was less than a month after I became receiver—that is, on February 18th, 1897."

The witness was asked to produce the written notice. Counsel for defendant objected to the introduction of said notice, because it was not such a notice as the contract or bond required. The court overruled the objection of the defendant, and the defendant reserved exceptions to said ruling. Said written notice was read by the witness, and is as follows:

"J. M. McKnight, president; H. H. Rademaker, vice-president; E. E. Reutlinger, cashier.

German national bank.

LOUISVILLE, KY., *February* 18, 1897.

To the Fidelity & Deposit Company of Maryland, Baltimore, Md.

42 GENTLEMEN: Referring to the certificate No. 4043, issued from your security department, guaranteeing the fidelity of Jacob M. McKnight, president of the German national bank, under your bond to him, No. 5002, issued June 1st, 1894, in favor of such bank, we hereby notify you that said Jacob M. McKnight, as president, has been found in default to this bank, and that you will be required to make an indemnity to me as receiver, to the extent of said bond.

Yours truly, R. H. COURTNEY,
Receiver German National Bank."

Said witness further stated:

"At the time we gave that notice, we had examined far enough to know he was in default far beyond the amount of the bond. Proof of the claim was made on the third of July, 1897. It was sent to the company at Baltimore, and was lodged with its agent here. I had several conferences with Mr. Odiorne, an agent of the company here, and Mr. Mullen, his assistant, was also from time to time kept informed; not specifically, but he was informed sufficiently to know that a claim would be made, that there was ground for claim, and just ground, by conversation on the street; they were up there at the bank, at the office up there on First and Market, at various times, and on the street after the arrest of McKnight; it was a thing that was talked about almost whenever there was a meeting." This question was asked the witness: "Was there any statement made to you by Mr. Mullen as to the notice and proof of claim, as to whether or not he would require any more specific notice?"

Objected to by counsel for the defendant. Objection overruled. Exceptions by the counsel for the defendant.

Witness answered as follows: "No, sir." Said witness also stated that these defalcations were not known to him until after he began the investigation under the experts of the comptroller, and he continued to find them out as examination progressed, and that McKnight was not arrested for any of these acts as far as he had heard. He said: "Almost immediately after the bank passed into my hands as receiver I began to ascertain the defalcations. The experts, Mr. Hays, a Government expert, and Mr. Escott, a national-bank examiner, were at work immediately after Mr. McKnight's arrest. I kept pace with their investigation. It was almost immediately after the bank closed that these defalcations became known, not all of them, but enough to ground the claim upon." I had that
43 notice of February 18th, 1897, mailed to the office at Baltimore. It is my impression that I mailed a like notice to the agent here.

The experts began examining the books of the bank almost immediately after it was closed on the 18th of January, 1897. The comptroller had it examined by Mr. Escott before he appointed a receiver—that is, about a week before it was closed Mr. Escott was at work in the examination, that is my recollection—about a week before. Col. Boyle, attorney for defendant, stated in the court in the presence of the jury as follows: "We have no doubt he sent it (the notice), and make no point on that, but we desire to object to the admission of it, as not being the notice required in the contract, and therefore we received no notice whatever." The court then overruled said objection and admitted said notice, to which defendant excepted.

Mr. James Escott testified in substance that he was a national bank examiner in 1897, and had been for nearly four years, and that he made several examinations of this bank for the Government during that period, 1894, 1895 and 1896, two examinations each year, and said: "I think the bank was closed on the 21st of January, 1897, or the 18th—I am not sure which. There was nearly a week between the closing of the bank and the appointment of the receiver—about a week. Mr. McKnight was arrested the following day after the closing of the bank. We began to get these shortages about two or three weeks after the bank was closed. They were discovered from time to time. I began to discover them in two weeks."

There was further evidence introduced by the plaintiff conducing to prove that one S. E. Edmunds, on Jan. 18, 1896, received from the German national bank $1,000 in money, and for which, at the instance of McKnight, he gave his individual check on that bank; that the cashier and teller (being the one person) carried this check as cash until March 12, 1896, at the request of McKnight, on which day it was charged to the account of S. E. Edmunds & Company, by order of the president, J. M. McKnight, and that the said $1,000 was used by the said Edmunds for the purpose of aiding in the election of the said McKnight as mayor of Louisville in the following manner:

About Jan. 14, 1896, Henry S. Tyler, then mayor of the city of Louisville, died, and the said J. M. McKnight became a candidate for the vacant position, and which position was to be filled by the general council of the city of Louisville. The said general council was composed of twelve aldermen and twenty-four council-
44 men, and among the members were men named Jenne, Sowders, Glover and Adams; that said four members demanded the payment of $1,000 for their use and benefit before they would agree to vote for McKnight, and that said Edmunds so informed McKnight, who directed the cashier and teller to take $1,000 to another bank and get for Edmunds ten bills of $100 each, which he did, and delivered the said ten bills to the said Edmunds, who took the same and distributed among the four members as follows: $400 to Jenne, $200 to Adams, $200 to Sowders, and $200 to Glover, and in consideration thereof each one signed the following agreement:

"I hereby pledge myself to vote for J. M. McKnight for mayor of the city of Louisville, first, last and all the time, until elected or defeated before the general council." There was testimony conducing to show that said vice-president, Adolph Reutlinger, heard said McKnight tell the cashier to go out and get said ten bills of $100.00 each for said Edmunds; that said Edmunds was a prominent factor of said McKnight's race for mayor, and was frequently in the bank during that time; that there were frequent meetings at the bank of persons interested in his candidacy; that during that time Edmunds was frequently seen in conversation with Adolph and Rudolph Reutlinger. The said Edmunds had no individual account in the bank then, but S. E. Edmunds & Co. had an account there, but it does not appear how it stood at the time he gave the check and received the money; but he testified that he understood that the check was to be taken care of by McKnight.

There was also evidence introduced by the plaintiff conducing to prove that the said McKnight was defeated in his contest for mayor, and that Geo. D. Todd, Esq., was elected, and that afterwards there was great dissension between the said Todd and the boards of aldermen and councilmen, and that a majority of the board of aldermen—seven in number—were opposed to the mayor and determined to block legislation proposed by him. Mayor Todd, however, began to make inroads on the opposition to him, and while five of the seven members were working in harmony with him, there were two—Messrs. Britt and Reeder—who were considered wavering, and efforts were made to get them to unite with the five; that said S. E. Edmunds acted as a go-between in the negotiation with them, and that the said McKnight drew up a paper, intended to be signed by the seven aldermen, pledging themselves to stand together in their contest against the mayor, but Britt and Reeder refused to sign the paper unless each of them received $1,000; that said Edmunds informed McKnight of this fact, and that thereupon the said McKnight requested R. E. Reutlinger, the cashier and teller, to remain at the bank and keep the vault open after the regular time for closing; that McKnight then told the said cashier "that he (McKnight) had a big scheme on hand and that it was a big thing; but did not further explain it; that said McKnight caused said Britt and Reeder to be brought to the bank by said Edmunds at or about 6.30 p. m. on February 6, 1896; that said Edmunds, in the presence of said cashier and said Britt and Reeder, prepared the note hereinafter given, and said Britt and Reeder signed it, and then they went upstairs and signed the agreement hereinafter given, and then they returned to the bank office, and the cashier then handed Britt the two thousand dollars in currency by direction of McKnight. Said note reads as follows:

"$2,000.00. LOUISVILLE, KY., *Feb.* 6, 1896.

"One year after date we promise to pay to the order of ourselves two thousand dollars without defalcation, value received, negotiable and payable at German national bank.

F. A. BRITT.
JOHN W. REEDER."

"Indorsed: F. A. Britt, John W. Reeder. Protested for non-payment Feb. 9, 1897. Edw. A. Newhouse, N. P., J. C."

The testimony also conduced to show that while in the said bank building, the said Edmunds asked the said Britt and Reeder to lend him $150 apiece of this money, and that Britt thereupon loaned him $150, but Reeder would not let him have more than $75, and that in this way the said Edmunds got $225 of the money. The agreement signed by Britt and Reeder and five other aldermen is as follows:

"LOUISVILLE, KY., *February 5th*, 1896.

"We do this day and date agree with one another, and bind ourselves on our sacred words and honor, that we will stand together on any and all propositions of legislation that may come before the body of which we are members, namely, the board of aldermen of the city of Louisville; that we will so caucus with our friend
46 J. M. McKnight, and act wisely, and secure for our friends an equal division of the offices and any profit that may arise therefrom; that we, as men and members of the upper board, will not allow the mayor to force upon us any appointments that we do not deem wise and to our interest, and in so doing will not act the first night of a meeting on any proposition sent in by the mayor, but will take one week for consideration and caucus.

"Now we have calmly considered the above, and do again pledge ourselves one to the other before subscribing our names this day and date, Feb. 5th, 1896, in the presence of one and the other.

C. J. JENNE.
J. E. LEATHERMAN.
R. E. KING.
R. O. BREUNER.
J. D. TRICK.
F. A. BRITT.
JOHN W. REEDER."

The contest for mayor and the subsequent controversies were matters of general notoriety, and were discussed in the newspapers, and the said Edmunds was frequently in the bank conferring with McKnight upon these subjects, and was often seen by and had conversations with the vice-president and director and the other officers of the bank, who knew of the purposes of his visits.

And there was further evidence introduced by the plaintiff, conducing to prove that the cashier and teller, who was the son of the vice-president, notified him of the fact that the bank had been kept open, and that the $2,000 had been paid to Britt and Reeder and the note taken; that he notified him of that at his house that evening about 9.30 p. m., and that the next morning the vice-president, Adolph Reutlinger, asked McKnight for an explanation of the matter. McKnight responded that the transaction was all right and that the note was good, and that it would be guaranteed by men of credit, whom he named. The said Adolph Reutlinger was not, however, satisfied, and notified other members of the board of directors,

and shortly afterwards brought the matter before the board for its consideration; whereupon McKnight made the same explanation that he had before, and it seemed to satisfy the board.

There was testimony conducing to show that the morning after the Britt and Reeder transaction the said Adolph Reutlinger, the vice-president, approached McKnight about the said matter, and that McKnight had a long, yellow envelope in his hand, and he told the said vice-president that "those fellows had signed it and that he would not sign that for the city of Louisville;" that "he had a document there in his pocket which was signed by those fellows;" that "he had a meeting upstairs and that paper was signed,
47 and he would not sign it for the city of Louisville;" that McKnight did not mention the names of the persons who had signed it, but this conversation was had with him by the vice-president when the Britt and Reeder matter was being discussed.

There was also testimony conducing to show that Adolph Reutlinger, the vice-president, noticed that the bank was to get no interest whatever on the loan to Britt and Reeder for a year; the vice-president knew that this was an unusual and queer bank transaction, and that there was no promise by McKnight to pay that interest, and no explanation made to him or to the board of directors about the interest feature of the transaction; that said Adolph Reutlinger had been a bank officer for many years; that he had been an officer of the German national bank since 1872; that the feeling between Adolph Reutlinger, the vice-president, and McKnight was not friendly during the year 1896; that during all that time Adolph Reutlinger was drawing a salary of $1,500.00 as vice-president, and he was custodian of the bank's cash reserve of many thousand of dollars, and he had the money in a box to which he alone had the combination.

Other testimony was offered conducing to prove that McKnight drew his check for other sums of money which were applied to the payment of his private indebtedness, and which sums were charged to different accounts; that on Jan. 21, 1896, the said McKnight drew his check upon the German national bank for $1,253.00 in payment of a claim in the hands of M. and D. Sachs, attorneys-at-law, against him; and that on March 12, 1896, he drew a similar check for $1,650.00, which checks were paid by the bank and were carried by the cashier and teller as cash items until March 12, 1896, by direction of McKnight, when they were charged—the former to S. E. Edmunds & Co., and the latter to an account called the "Louisville deposit collateral account," and that this was done by the bookkeeper by the order either of McKnight or of Mr. Reutlinger, the cashier and teller; that the said vice-president saw that check of McKnight to Sachs for $1,253.00 on the file of the cashier, and that it was being held up by the cashier as a cash item, and that the said vice-president asked the cashier and teller why he was doing that, and that said cashier said he was doing it at the request of McKnight; that it was the custom of the cashier to tell his father, the vice-president, all that went on at the bank, and he told his father when McKnight was overdrawn and whenever he discounted a note

for him, and the said cashier and teller testified that he
48 carried the checks as cash items by the direction of McKnight, and never gave any instructions to any one as to what accounts to charge them to.

The account known as the Louisville deposit collateral account represented money that belonged to the Germania Safety Vault and Trust Company, as assignee of the insolvent Louisville deposit bank.

And there was further evidence introduced by the plaintiff conducing to prove that on June 6, 1896, J. M. McKnight drew upon the German national bank for $3,736.60, in payment to Mr. H. F. Embry for a private debt due from McKnight to Embry, and the said sum was, by order of McKnight, charged on the books to E. G. Williams, special; that the said E. G. Williams was a broker in whiskey, and was employed by the bank to sell whiskey owned by it, and in which the said McKnight had no personal interest.

There was also testimony conducing to show that in November, 1896, S. E. Edmunds and Company, a firm composed of S. E. Edmunds and said J. M. McKnight, were indebted to the German national bank on a note for $7,127.94; that warehouse receipts for tobacco owned by the said firm were pledged with said bank to secure said note; that at the request of said McKnight said note of S. E. Edmunds & Company was surrendered and canceled, and two new notes were executed by S. E. Edmunds, one for $2,127.94 and the other for $5,000.00; that said collateral was afterwards sold by R. H. Courtney, receiver, and that he received in payment for it $5,062.22, leaving a balance due of $2,627.94 on said two notes; that said Edmunds thought at the time of the sale and at the time of the execution of said notes and at the time of the trial herein that said tobacco was worth the full amount of said notes and ought to have brought said sum and would have brought said sum if sold by himself or some other expert tobacco salesman or broker.

But the testimony of R. H. Courtney also conduced to prove that he handled said tobacco as well as he could, and that, in his opinion, it brought on the market all it was worth.

Evidence was also introduced conducing to prove that on January 4, 1897, the German national bank paid $379.96 to the Union national bank through the clearing-house on a check of J. M. McKnight to Mr. H. F. Embry, in payment of a private debt of said J. M. McKnight; that said check was charged by the order of said McKnight or said cashier and teller, to E. G. Williams, special;
49 that the $45.00 cash item set out in the petition was entered in the books of the cashier and teller Jan. 12, 1896; that two cash items of $25.00 each were entered April 25, 1896; that the one for $76.00 was entered May 21, 1896; that the one for $47.15 was entered on May 21, 1896; the one for $10.00 and the one for $15.00 were entered on the same day; that these entries were simply memoranda in the book of the cashier and teller, and indicated that checks had been cashed for McKnight by the teller, and the said items were thus carried in the cash items until the bank closed.

JOHN KERWIN, having been introduced by plaintiff, testified substantially that he was the individual book-keeper of the German national bank; that he had made the entries of the books under the instructions either from the cashier, Mr. Rudolph E. Reutlinger, or from Mr. J. M. McKnight, the president—that first one and then the other would give him instructions how to make these entries; that he could not state at the trial whether he got the orders as to any particular matter from the cashier or from McKnight; that McKnight's check for $1,253.00 to Attorney Sachs on January 21, 1896, which was paid through the clearing-house the next day, was kept by the cashier and teller in his cash as a cash item until March 12, 1896, and was under the control and custody of the cashier during all that time; that the witness entered this check for $1,253.00 as soon as he received it from the cashier; that other employés in the bank, and the vice-president and director, Mr. Adolph Reutlinger, the father of the cashier and teller, also now and then helped the cashier and teller in straightening out his cash matters, and in that way now and then learned what checks were held back in the cash items; that all of the other checks given by McKnight and complained of herein were entered as they were paid by the bank; that the note executed by Britt and Reeder to the German national bank for $2,000.00 was dated on February 6, 1896, and the money was gotten that day, but it was entered on the books on February 10, 1896, with the other discounted notes due to the bank, and in regular order, and open to the inspection of the officers of the bank or any director who wanted to examine the books or see what assets the bank had. Said John Kerwin, the individual book-keeper, was asked this question: "Was that ledger $3,000 out of balance during all the time you were there, or longer?" The court refused to permit the witness to answer this question. The defendant, by counsel, thereupon avowed that, if permitted to answer the question, the witness would answer truly that from the time McKnight came to the bank—from the time McKnight was elected vice-president and manager until the bank was closed by the comptroller—the books were irregular and out of balance, and they were out of balance not less than $3,000 during the whole time he was an officer in that bank, and this was reported to the officers of the bank other than McKnight, by the national bank examiner, who went over the books, and all the directors knew that it remained in that condition. The court still refused to allow witness to answer the question, and to the ruling of the court the defendant by counsel, excepted.

There was further testimony conducing to prove that Mr. Adolph Reutlinger was president of the German national bank in June, 1894, and up to Jan. 1, 1895, when Mr. McKnight was elected president; that Mr. Adolph Reutlinger from Jan. 1, 1895, until September 5, 1896, was vice-president and a director of the bank, and was an officer of the Germania Safety Vault and Trust Company, which occupied the building adjoining that of the German national bank, with a door in the wall between them; that Adolph Reutlinger, the vice-president and director, had his desk in the banking-room of the

German national bank, and used said desk daily during business hours; that Adolph Reutlinger sometimes acted as cashier and teller for his son, Rudolph Reutlinger, while Mr. McKnight was president and in the summer of 1896 and prior thereto; that Adolph Ruetlinger was familiar with the management of the German national bank during all the time Mr. McKnight was there; that Adolph Reutlinger frequently examined the books of the bank and kept the run of the bank, and looked to see what notes were discounted by the bank, and what overdrafts existed; that McKnight was overdrawn in large sums of money from July, 1895, up to fifteen days before the bank closed; that his overdrafts were frequently as high as $1,200.00; that he was overdrawn nearly every day during that period. That Mr. Adolph Reutlinger, the vice-president and director, knew this—that the other directors knew of these overdrafts as well as the cashier and teller; that the vice-president and director saw the trial balance every month—that it was left there for his and his son's inspection, though the witness could not positively say they did see it. The overdrafts of the said McKnight were offered in evidence by the attorney for the plaintiff, and it appeared therefrom that the said McKnight was overdrawn in his accounts from the time he became employed by the bank to the time of the appointment of the receiver, with the exception of occasional periods.

51 And afterwards the plaintiff introduced as a witness JACOB REISCH, who, having been duly sworn, testified as follows:

(Direct examination by Mr. SMITH:)

Q. Were you a director in this bank?
A. I was.
Q. How long?
A. A year.
Q. In 1896?
A. 1896.
Q. Did you know of a check dated June 8, 1896, drawn by Mr. McKnight on the German national bank, in favor of the Union national bank, for $3,736.60, as being paid by your bank?
A. I did not know anything about it.
Q. Did you know anything of a like check for $379.96 being paid as of Jan. 4, 1897?
A. No, sir.
Q. Did you know anything of two checks, one of $1,650 and the other for $1,253, each being payable to M. A., D. A. and J. G. Sachs, one dated March 12, 1896, and the other dated January 20, 1896, being paid by your bank?
A. No, sir.
Q. Did you know anything of a check of $1,000, drawn by S. E. Edmunds on your bank, dated Jan. 18, 1896?
A. No, sir; I never heard of any of them.
Q. Did you know anything of a note of Britt and Reeder being

discounted at your bank, the note being for $2,000, on the 6th of February, 1896?

A. No, sir; I did not know anything about it.

Q. Did not know of any of those papers?

A. No, sir.

Q. Did you ever learn of those papers or any of them before you became a witness in this case?

A. No, sir; I just heard about it, about that Reeder note, about two days after, that Reeder went up that night in the bank and got $2,000 out, but that was about two or three days after that happened.

Q. About two or three days after the Britt and Reeder note was executed, you heard of it?

A. Yes, sir.

Q. What did you hear in regard to it?

A. Old man Reutlinger told me, he said the bank was open about six o'clock that night, and Britt and Reeder, and the whole gang there, he gave a note and got $2,000 out of the bank.

Q. Got some money out of the bank?

52 A. Yes, sir.

Q. Did you learn what it was for?

A. No; he did not state what it was for.

Q. Did you ever learn what it was for?

A. No, sir; I just heard after that it was for the council race, the Todd race, something like that.

Q. Was it after or before the bank was closed you heard about the Todd race?

A. I heard that three days after the money was out of the bank.

Q. What was it you heard in three days after the money was out of the bank?

A. That the bank was open after six o'clock, and they got $2,000 out of the bank.

Q. Now, when was it you heard that that money was intended in connection with the Todd race?

A. At the same time, old man Reutlinger told me that the same time.

Q. Told you what?

A. Old man Reutlinger told me that.

Q. Told you what?

A. That the money was used for the mayor's race for the Todd race.

Q. That it was money used in that race?

A. Yes, sir.

Q. Are you certain Mr. Reutlinger told you that?

A. He told me, not in the directors' meeting, he told me that outside.

Q. Were you not in the directors' meeting when that note was considered?

A. Yes, sir; I believe that note did come up, and McKnight said if Reeder did not pay it he would.

Q. Did McKnight say whether or not Britt and Reeder were good?

A. Yes, sir; they said they were good.

Q. Said Britt and Reeder were good?

A. Yes, sir; and I believe he said Mr. Gaulbert would go on the note, is on the note, or went on it, didn't exactly say he was on it, he said he went on it.

Q. Did he say anything about Mr. Whallen?

A. No, he never mentioned anything about Whallen.

Q. You don't remember?

A. I don't remember that.

Q. He said Britt and Reeder were good?

Objected to by counsel for defendant as leading, and the question was not answered.

Counsel for defendant declined to cross-examine.

53 And there was other testimony conducing to prove that the management of the German national bank by its directors was careless or negligent, and that they did not observe, or cause to be observed, due and customary supervision over the employees for the prevention of default; and there was evidence conducing to prove that there had not been a complete or customary inspection of the books of the said McKnight on behalf of the said bank once in every twelve months during the continuance of the bond, and that there was no examination of any cash or discounted paper or securities in the custody or under the control of the said McKnight.

And thereupon the defendant offered in evidence a letter signed by R. E. Reutlinger, cashier, and addressed to the defendant, The Fidelity & Deposit Company of Maryland, as follows:

"Security department. No. 5002. Bond division.

Fidelity and Deposit Company of Maryland.

Home office, Baltimore, Maryland.

BALTIMORE, *May* 15, 1896.

To German nat'l bank, Louisville, Ky.

DEAR SIR: We hereby notify you that bond No. 5002 for $10,000, issued by this company on behalf of Jacob M. McKnight, in your employ as president, will expire on the 1st day of June next.

The premium, $40.00, should be paid on or before the date of expiration, otherwise the bond will lapse. Kindly have the certificate below filled in and signed, and forward with remittance for premium to Jos. S. Odiorne, gen'l agent, when the renewal receipt will be sent to you.

Yours respectfully, EDWIN WARFIELD, *President.*"

"To Fidelity and Deposit Company of Maryland:

This is to certify, that on the — day of ——, 189–, the books and accounts of Mr. J. M. McKnight, *is* president, in our employ, *as*—

has no books and accounts—were examined by us, and we found them correct in every respect and all moneys handled by him accounted for.

54 "He has performed his duties in an acceptable and satisfactory manner, and we know of no reason why the guarantee bond should not be continued.

His salary is now $4,500.00, and he is employed as president.

Signature, R. E. REUTLINGER,
Cash., Employer.

Dated at Louisville, Ky., May 29, 1896.
To employer—notice of expiration."

And it not appearing that there had been special authority from the board of directors of the said bank, authorizing or directing the said cashier to write such communication, and the court being of opinion that the cashier had no such power by reason of his office, the same was not binding upon the said bank, and excluded the same as evidence; to which the defendant excepted at the time and still excepts. After the court had refused the defendant permission to read to the jury the letter signed by the cashier and addressed by him to the defendant, and dated May 29, 1896, and relative to the renewal of the said McKnight's bond, the counsel for the defendant asked the cashier the following questions:

"I would like to ask the witness this question: Did not the bank pay for the bond of the president?"

A. "I could not answer that; I don't know it."

Q. "Did not the bank pay for your bond as cashier?"

A. "I think they did; yes, sir."

Q. "Were not all these bond matters discussed by the board of directors and the party that was to give bond, and was not the party that was to give bond selected by the board of directors?"

Objected to by counsel for plaintiff; objection sustained; to which the defendant excepted. Then counsel for the defendant asked the witness this question:

"Did you not know why you were signing any paper of this sort at all?"

A. "Yes, sir; I knew when that letter came, I knew it, yes, sir; not before that, though."

Q. "You knew the bond had to be renewed then, and you wrote the letter to the company on that account?"

A. "I signed that paper, yes, sir."

Objected to by counsel for plaintiff because the paper had been excluded and is immaterial.

By the COURT: "Yes, that is an improper question."

To which ruling of the court the defendant excepted.

55 There was also evidence tending to show that J. M. McKnight was president of the bank, and the other officers of the bank, including the directory, had entire confidence in his honesty and integrity up to the time the bank was closed; that none of

them had any knowledge that any act of his, in the management of said bank, was fraudulent or dishonest, until after the closing of the bank; that said bank had a discount committee who regularly examined and passed on the papers of the bank, as required of such committee, and the directory of said bank undertook to make a monthly investigation, sometimes twice a month, of the affairs of said bank, and required the president to go through same with them and make a full report thereon; that some of the directors were in the bank almost daily inspecting its affairs, and that they did at all times observe due and customary supervision over said president for the prevention of default; that none of the officers of said bank, including the directory, had any knowledge of the various checks set up in the petition as fraudulent, and that were charged to the account of other parties than those drawing them, or on whom they were drawn, except the clerks who charged them up to said account as stated, and there was evidence tending to show that they charged them up to such accounts by the direction of McKnight, the president, and except, further, R. E. Reutlinger, the cashier and teller of said bank, knew of said checks when they came into said bank and was instructed to hold them as cash items by McKnight, but further than this he had no knowledge of them.

As to the $2,000, Britt and Reeder note, there was also evidence tending to show that R. E. Reutlinger was required to stay at the bank until after banking hours, and was directed by McKnight to, and did lay out the $2,000 on said note to said parties, but that further than this he had no knowledge thereof.

There was also evidence tending further to show that said R. E. Reutlinger informed his father, Adolph Reutlinger, vice-president, of the payment of this $2,000 that night, and that said Adolph Reutlinger made inquiry of McKnight to explain the transaction. That thereupon McKnight told him that said parties were good and solvent, and the note was regularly discounted and all right, and that if required, Gaulbert or Whallen would sign same with them, and that he, McKnight, would guarantee the payment thereof; that the parties were obliged to have the money that night, and he so kept the bank open to let them have it.

56 There was evidence tending further to show that said Adolph Reutlinger then went before the directory and told them what McKnight had said in regard to this note, and said to them that he had made some investigation and could not find that these parties had any property; that he was unable to say whether or not they were good, and that thereupon McKnight came before said directory and made the same statement to them that he had made to Adolph Reutlinger, assuring them that the note was good, and that said directors believed and relied on his statement, and so passed the note; that there was no other evidence tending to show any further knowledge of said note, or its true character, by the other officers or any of the directors of the bank than is herein stated, except in the testimony of Jacob Reisch, one of the directors, that some short time after the execution of said note Adolph Reutlinger told him what he had learned thereof as herein stated, and fur-

ther he says that said Reutlinger told him then that the money was used in the mayor's race. This latter statement Adolph Reutlinger denied in his evidence.

There was also evidence tending to show, by the minutes of the directors of the bank, that the books were out of balance to the extent of $3,100, but that before the said bank was closed these discrepancies were discovered to be only clerical mistakes, and that they were corrected, bringing the books in balance.

And here the plaintiff rested.

And the defendant thereupon offered in evidence a copy of a petition filed by the plaintiff as receiver of the German national bank against Jacob M. McKnight and others on March 6, 1897, in the Jefferson circuit court, held in Louisville, Jefferson county, Kentucky, and which is in words and figures as follows:

"Jefferson Circuit Court.

"R. H. COURTNEY, Receiver of the German National Bank, Plaintiff,
vs.
"JACOB M. MCKNIGHT and CARL MCKNIGHT, Defendants.

"Petition Ordinary.

"The plaintiff, R. H. Courtney, states that the German national bank, an association created and existing under and by
57 virtue of the laws of the United States, and doing business in the city of Louisville, in the State of Kentucky, was on the 18th day of January, 1897, closed by orders of the bank examiner of the United States, and thereafter, on the 22nd day of January, 1897, the Comptroller of the Currency of the United States, having become satisfied that said German national bank was insolvent, appointed plaintiff receiver of said bank, to take possession of its assets, and to wind up its affairs as provided by the laws of the United States in such cases made and provided.

"The plaintiff says that he has qualified as such receiver and is now engaged in the performance of his duties as such.

"Plaintiff says that the German national bank as an association, created under the national banking act of the United States, had power to contract and be contracted with, sue and be sued, and do all other acts incident to its corporate existence.

"Plaintiff says that on March 19, 1895, the defendant Jacob M. McKnight executed and delivered his certain promissory note to the German national bank, in and by which he agreed and promised to pay on demand the sum of one thousand dollars, with interest from date until paid. Plaintiff says that demand has been made for the payment of said note, but no part thereof has been paid, and the whole is now due and unpaid, together with interest from March 19th, 1895.

"Plaintiff files said note herewith as part hereof, marked Exhibit 'A.'

"2. Plaintiff further says that on March 16, 1896, the defendant Jacob M. McKnight executed and delivered his certain other promissory note to the German national bank, in and by which he agreed and promised to pay to said bank sixty days after said date, the sum of three hundred dollars, with interest from the maturity thereof, July 18, 1896, at the rate of six per cent. per annum until paid.

"Plaintiff says that the principal and interest of said note is now due, and the said note is filed herewith as part hereof marked Exhibit 'B'

"3. Plaintiff further says that on Jan. 21st, 1896, the defendant Jacob M. McKnight appropriated and wrongfully took from the funds of said bank for his own use, the sum of $2,253, and plaintiff says that by said conversion the defendant Jacob M. McKnight became indebted to plaintiff for money had and received to plaintiff's use in the sum of $2,253, with interest from January 21st, 1896.

58 "4. Plaintiff further says that on June 8, 1896, the defendant Jacob M. McKnight appropriated and wrongfully took from the funds of said bank for his own use, the sum of $3,736.60, and plaintiff says that by said conversion, the defendant Jacob M. McKnight became indebted to plaintiff for money had and received to plaintiff's use in the sum of $3,736.60, with interest from June 8th, 1896.

"Plaintiff says that the defendant Jacob M. McKnight, being indebted to the German national bank as stated, did, subsequent to the creation of said indebtedness, with the intent to fraudulently cheat, hinder and delay his creditors, convey to the defendant Carl McKnight, by deed dated February 17, 1897, the following-described property, in Jefferson county, Kentucky, with the improvements thereon, to wit:

"Lying and being on the south side of the Shelbyville Branch turnpike road, about one-half mile east of Beargrass creek, and bounded as follows: Beginning in the center line of said turnpike road, at Birchler's western corner, thence running with Birchler's western line south 37½ degrees east 73 poles to a point near a branch; thence south 52½ degrees west 2 poles to a stake; thence north 37½ degrees west $20\frac{7}{10}$ poles; thence south 52½ degrees west 23½ poles to the eastern line of Bull's tract; thence with Bull's eastern line north 52½ degrees west $69\frac{8}{10}$ poles to the center line of the turnpike; thence with the said center line, north 87 degrees east 31 poles to the point of beginning; and being the same property conveyed to J. McKnight by Henry F. Embry and wife, by deed dated June 7th, 1895, and recorded in Deed Book 453, page 128, Jefferson county court clerk's office.

"Plaintiff makes Carl McKnight a party defendant hereto, and calls upon him to set up his claim herein to said property or be forever barred.

"Plaintiff says that the nature of the claim of the German national bank against the defendant Jacob M. McKnight is for promissory notes executed by him to said bank as set forth herein, and for money had and received to plaintiff's use and benefit; that the

same is just and the plaintiff believes he ought to recover the sum of $1,000.00, with interest from March 19, 1895, and the further sum of $300.00, with interest from July 18, 1896, and the further sum of $2,253.00, with interest from Jan. 21st, 1896, and the further sum of $3,736.60, with interest from June 8, 1896.

" Plaintiff says that said money which he seeks to recover
59 is now due and unpaid, and that the defendant has no property in this State subject to execution, or not enough thereof to satisfy plaintiff's demand, and the collection of the demand will be endangered by delay in obtaining judgment or a return of no property found; and that the defendant Jacob McKnight has sold, conveyed or otherwise disposed of his property, or suffered or permitted it to be sold with fraudulent intent to cheat, hinder and delay his creditors.

" Wherefore, plaintiff prays for judgment against the said defendant Jacob M. McKnight in the sum of $1,000.00, with interest from March 19th, 1895; and the further sum of $300.00, with interest from July 18, 1896; and the further sum of $300.00, with interest from July 18, 1896; and the further sum of $2,253.00, with interest from Jan. 21st, 1896; and the further sum of $3,736.60, with interest from June 8, 1896, until paid; for a general attachment herein, for its costs herein expended, and for all proper and general relief.

" GIBSON AND MARSHALL,
" Att'ys for Pl'ff.

" R. H. Courtney says he is receiver of the German national bank, and the foregoing statements are true as he verily believes.

R. H. COURTNEY.

" Subscribed and sworn to before me by R. H. Courtney this the 6th day of March, 1897.

WILLIAM T. HALE, *N. P., J. C.*

" Commission expires Jan. 13, 1900."

On said petition a summons and an attachment were duly issued by the clerk of said court, and they were duly executed—the former on said McKnight, and the latter on property to which it was claimed he had title.

After the court delivered its charge to the jury and before the jury retired and in the presence of the jury the defendant by its counsel presented certain objections to certain portions of the said charge as follows:

First. The court in its charge said:

"Before, however, going into that (the grounds of defense to the action), I should have said, if I have not, that the action that was brought in the Jefferson circuit court some time in March, 1897, for the recovery of certain debts, should be given no effect in your de-
liberations in this case. That was a suit not upon this in-
60 debtedness, except in respect to one particular item, that of $3,736.60, but was a suit upon other indebtedness. It is a suit in several paragraphs, one of which is upon notes and obliga-

tions executed by McKnight to the bank, but the only one of the items mentioned in this suit that is contained in the suit in the State court is that of $3,736, which represents money that had been paid through the Union national bank upon the debt of one Embry. I need not go into any reasons with you upon that subject, but that court is clearly of the opinion that no importance should be attached to that suit, or any of its affirmations in your deliberations in this case."

Counsel for defendant objected and excepted to the foregoing portion of the charge.

Second. The court in its charge, among other things, said:

"The defendant insists upon this clause of the contract between it and the bank, namely, that the 'employer shall immediately give the company notice in writing of the discovery of any default or loss hereunder, and shall file its or their claims hereunder, with full particulars thereof, as soon as practicable thereafter, and no claim which shall not be so filed by the employer with the company within six months after the expiration or cancellation of its bond, or within six months after the employé shall have ceased to be in the employer's service, shall be payable hereunder.' In considering that clause of the contract between the parties I do not think the word 'immediate' should be given such construction as that it would mean instantly, but I believe it conforms with the views of the supreme court and the authorities generally to tell you that it means that it was the duty of the plaintiff in this case to give, as soon as reasonably practicable and with promptness, notice of the discovery of any default.

"It did not mean that as soon as one was suspected that notice should be given; but if you believe from the evidence that within a reasonable time after the receiver in this case, and you must remember that he is the receiver merely and knew nothing about the management of this bank, nothing of its affairs, until he was appointed, if you believe that within a reasonable time after he discovered, actually discovered a default, he gave the notice of the 18th day of February, 1897, you are at liberty to infer that that part of the obligation of this bond has been performed."

Counsel for defendant objected to this portion of the charge
61 because the notice of February 18th was not such notice as was required by the contract, and that the instruction was therefore erroneous and misleading; but the court overruled the objection, and allowed the charge to stand, to which the defendant at the time excepted, and still excepts.

Third. In delivering the charge to the jury, the court says:

"It (the bond) also requires that the insured, that is to say, the bank, shall file with the company his or their claim thereunder, with full particulars thereof, as soon as practicable. Now, I do not believe that that means that the particulars shall be filed until they are known. In this case the evidence, I think, will justify you in the conclusion that this claim was made as soon as particulars of this kind were known. One of the important reasons why this suit that was filed in the State court was not regarded as important evi-

dence in this case was that it does not show anything concerning the particulars of this debt, nor does it show that the plaintiff had known the particulars before this suit was filed. I think you will be justified in concluding from the evidence that with reasonable promptness, after the particulars of this claim were ascertained by the plaintiff, this claim was made in such detail that no fault has been found with it, so far as has appeared."

The defendant, by counsel, objected to the foregoing portion of the charge, because there was no sufficient evidence that would justify the jury in finding that the particulars were filed within a reasonable time; and because it appeared from the suit in the State court mentioned in the charge, that the receiver in this case had knowledge of that particular default of $3,736, and that the court, therefore, should have instructed the jury to the contrary of what was contained in the charge. But the court overruled the objection, and allowed the charge to stand, to which the defendant at this time excepted, and still excepts.

Fourth. The court in its charge further said:

"There is another clause in the bond which reads in this way:

"'That there shall be complete inspection of the accounts and books of the employé, on behalf of the employer, at least once in every twelve months from the date of this bond; such inspection shall include an examination of all cash and securities of which the employé shall have custody or charge.'

"Now, gentlemen, the evidence on that subject has not been
62 full. It is for you to determine whether there was that inspection, that complete inspection of the accounts and books of the employé on behalf of the employer, within at least every twelve months, and whether it included an examination of the cash and securities which the employé shall have personally in charge. This would be a much more important consideration if the president of the bank instead of the cashier had charge of the securities or cash of the bank. The president, I tell you as a matter of law, does not have charge of the cash or securities of a bank, so that the president is probably but little concerned with this particular clause of this contract."

To which portion of said charge the defendant objected. But the court overruled the objection and allowed the charge to stand, to which the defendant then excepted, and still excepts.

Fifth. And the court further said in its charge to the jury:

"The last clause to which I will call your attention reads this way:

"'That the employer shall observe, or cause to be observed, due and customary supervision over the employé for the prevention of default, and if the employer shall at any time during the currency of this bond, condone any act or default upon the part of the employé which would give the employer the right to claim hereunder, and shall continue the employé in his service without written notice to the company, the company shall not be responsible hereunder for any default of the employé which may occur subsequent to such act or default so condoned.'

"Now, gentlemen, as I said, this is a bond given to secure the bank against loss by reason of the fraudulent acts of McKnight. It was not given idly; it was given for the very purpose of securing the bank against McKnight's fraudulent acts; but at the same time these obligations upon the part of the bank were also expressed in the contract and must receive reasonable and fair consideration, and they must be given due weight; but of course these contracts are generally written by the security companies themselves, with great pains, great elaboration is used for the purpose of putting in as many things as possible for the assured to do, I mean the bank in this case. These conditions must be observed by the bank, but they must be observed on a reasonable construction of these terms, on a construction that the court thinks is the just and proper one. The provision that the employer shall observe, or cause to be observed, due and customary supervision over the employé
63 for the prevention of default, is an important part of this contract, and its proper meaning important to be ascertained. What is due or customary supervision is something that has not been made very clear by the evidence in making out this defence. I do not know that it has been made clear to the jury any more than it has to the court as to what is the customary supervision that is meant, or what is the due supervision that is meant. Possibly it may mean, and may be fairly considered to mean, a reasonable vigilance upon the part of the bank to prevent defaults.

"Now, what is meant by that word default in this connection? I suppose that it may fairly be said that it means that there shall be observed due and customary supervision over the employé for the prevention of fraudulent acts. I suppose it is just to say that this word default means the violation of this contract, or the doing of such an act as could be brought fairly within the provisions of this bond. That is to say, the word default here would mean precisely what the previous part of the bond meant when it said fraudulent acts of McKnight. So that this obligation that the bank assumed here was to use due and customary supervision over the employé for the prevention of his committing fraudulent acts. Now, it is for you to say whether—there is no satisfactory proof upon that subject—whether there was due and customary supervision to prevent McKnight from perpetrating these frauds. The contract goes on to say if the employer shall at any time during the currency of this bond condone any act or default on the part of the employé which would give the employer the right to claim hereunder, and shall continue the employé in its service without written notification to the company, the company shall not be responsible hereunder for any default of the employé which may occur subsequent to such act or default so condoned. Now, it is not very clear from the evidence what is claimed to bring this case within that clause of the contract. Possibly those overdrafts may be considered in that connection. Now, I take it that a mere overdraft by the president of a bank, which has been paid by the cashier and for which the cashier would also be responsible to the bank if he paid it wrongfully, a mere overdraft without regard to the amount of it, say $10 or $15,

a mere overdraft of the president on the funds of the bank, would not of itself be a fraudulent act. You would not infer it was a fraudulent act upon the mere act of his making an overdraft; and I suppose if the bank consented to these overdrafts, that they would not be fraudulent acts upon the part of the president, or any-
64 body else that would make an overdraft. The mere fact of drawing for more than you have got in the bank without any fraudulent intent in that mere transaction would hardly be a fraudulent act within the meaning of this bond. Now, I suppose in this case if the bank had known that McKnight was making these drafts for these various fraudulent purposes, such as buying up councilmen, buying up aldermen, paying his own private personal debts—if the bank had known and consented to it, there would not have been a fraudulent act by McKnight for which the bank could recover against this company. But if you believe from the evidence that the bank did not know of the fraudulent purposes for which these overdrafts were made, if the overdrafts were made in connection with this matter—if you believe the bank did not know the fraudulent purposes, then that changes the result; because if the bank did not know it and still consented to it, it would not relieve the act of McKnight from the character of being a fraudulent act. So that, as I view this case—you must remember, however, that you are the sole judges of the evidence in this case, its credibility—as I view this case, however, there would be no fraudulent acts upon McKnight's part, limiting my observations now to the overdrafts, there would be no fraudulent act upon his part merely in an overdraft, if there were no fraudulent intent behind it which was concealed from the bank."

And the defendant objected to the foregoing charge, because it did not correctly submit to the jury the consideration of knowledge on the part of the officers or directors of the bank, other than McKnight, which they had, or would have had if customary supervision had been exercised. The court overruled the objection and allowed the charge to stand, to which the defendant then excepted, and still excepts.

Sixth. The court further said in his charge to the jury:

"I do not think that the knowledge of a cashier of a bank, speaking generally, is the knowledge of the bank as to any matter that does not come within the customary or ordinary duties of a cashier or those which have been specially imposed upon him by the action of the bank. I do not think Mr. R. E. Reutlinger, in this case, in respect to any matter which he knew or could do, represented the bank, if it was outside of his ordinary duties; and I do not recall anything that he knew, so far as the proof shows, that would in anywise affect the liability of the defendant in this case."

The defendant objected to the foregoing portion of the
65 charge, on ground that the knowledge of the cashier of the acts of McKnight in respect to his overdrafts, his transaction- with Britt and Reeder and with Edmunds and Sachs, was the knowledge of the bank, and that the jury should have been so

told; but the court overruled the objection and allowed the charge to stand, to which the defendant then excepted, and still excepts.

Seventh. The court in its charge further says:

"Now, the vice-president of the bank tells you that he was about there as vice-president, on a small salary, largely because it was supposed that he knew of the solvency, understood generally the financial condition of the customers of the bank. He was not its chief executive officer; he was not the manager of the bank; and the mere fact that he may have occasionally gone in and assisted in the way that he explained to you, the cashier, in the discharge of his duties, particularly when the cashier was necessarily absent on account of sickness, I do not think that he would then have any more power to bind the bank by his acts than the cashier himself could have done if present.

"The testimony in respect to the knowledge of the bank of the purpose for which the $2,000 was taken out at half past six or seven o'clock in the evening, I say the knowledge of the bank respecting that must be proven, in my judgment, in such a way as to satisfy the jury that the bank, as distinguished from any mere director of it, knew of that transaction. The elder Reutlinger tells you that he did not know the purpose for which that money was taken out of the bank. He knew it was taken out after the ordinary banking hours, being taken out at seven or half past seven o'clock. The bank sometimes, for special reasons he named, had been kept open. Now, there is no inference to be drawn against R. E. Reutlinger because he, at the instance of the president, kept open the bank for the purpose of, as he said, introducing certain friends at that hour. If Mr. R. E. Reutlinger had known of the fraudulent purpose of McKnight, or had participated in it, that might have been a different thing; but he says he did not. He did not know what this money was paid out for. On demand of the president he paid the money, on the discount arranged by the president, and that is all he knew about it. The only conflict of evidence in the case is that Mr. Reisch says that within a short time, a day or two afterward, he was informed by the elder Reutlinger that this money was used for this political or corrupt purpose. It is for you to reconcile this statement. If you believe from the evidence that the
66 bank did know of this fraudulent purpose, and that this default of McKnight's, this fraudulent act of McKnight's in getting this $2,000, was known to the bank at the time, then I instruct you that all of the liability of the defendant in this case would cease then, that being the earliest, or one of the earliest, if — the earliest, of all these transactions. If you believe from the evidence that this transaction was known and condoned by the bank at the time, before these other transactions occurred, then the defendant in this case is not liable. But if you believe, on the contrary, that the bank did not know it, that it was the fraudulent act of McKnight alone, not participated in by the bank—when I say the bank, I mean the bank, I do not mean any individual director—then the defendant is liable."

Thereupon the defendant objected to that portion of the charge,

because it declared that the knowledge of an individual director of the acts of McKnight was not the knowledge of the bank, and that he should have instructed the jury that the knowledge of the vice-president, who was a director, or of Mr. Reusch, a director, should be imputed to the bank itself. But the court overruled the objection and allowed the charge to stand as above written, to which the defendant then excepted, and still excepts.

Eighth. After the jury had retired for the consideration of the case they afterwards, at their request, were brought into open court, in the presence of counsel for both sides, and thereupon the court said as follows:

"The jury have addressed to the court, in writing, this inquiry: 'If the jury agree that the directors of the bank were careless in the management of the bank, shall the jury find for the defendant?'

"Gentlemen of the jury, no such issue as that stated in this question was presented. The mere question of whether or not the directors generally were careless in their management of the bank is not a question for your consideration, nor would it exempt the defendant from the obligation imposed by the bond sued on. You have already been instructed as to the meaning and effect of the condition of the bond as to due and customary supervision, and outside of that there is no provision as — carelessness."

And the defendant thereupon, in the presence of the jury, objected to the foregoing instruction of the court, on the ground that it was erroneous and misleading. But the court overruled the objection, to which the defendant, by counsel, then excepted, and still excepts.

WALTER EVANS, *Judge.*

67 And thereafter, and within the time specified, the defendant, The Fidelity & Deposit Company of Maryland, by its counsel, presented this, its bill of exceptions herein, and prayed that it be signed, sealed and enrolled as a part of the record, which is now done.

And on the 15th day of July, 1899, came the defendant, by its attorneys, and filed its petition for a writ of error, and assignment of errors, and on its motion, it is ordered that the writ of error be allowed herein, upon condition that the said defendant execute a supersedeas bond in the penalty of $15,000.00, conditioned according to law, and thereupon the defendant filed its said bond, with St. John Boyle as surety, which bond is approved.

Said petition for writ of error is as follows:

United States Circuit Court, Sixth Circuit and District of Kentucky.

R. H. COURTNEY, Receiver, etc., Complainant,
vs.
FIDELITY & DEPOSIT COMPANY OF MARYLAND, Defendant. } No. 6654. At Law.

Petition for Writ of Error.

And now comes The Fidelity & Deposit Company of Maryland, defendant herein, and says that on or about the 3rd day of May, 1899, this court entered judgment herein in favor of the plaintiff against this defendant, in which judgment and the proceedings had prior thereunto in this case certain errors were committed to the prejudice of the defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this defendant prays that a writ of error may be issued in its behalf to the United States court of appeals for the sixth circuit for the correction of errors so complained of; that a transcript of the record and proceedings and papers in this cause, duly authenticated, may be sent to the said circuit court of appeals.

ST. JOHN BOYLE AND
EDWARD J. McDERMOTT,
Att'ys for Defendant.

68 Assignment of errors above referred to is as follows:

United States Circuit Court, Sixth Circuit and District of Kentucky.

R. H. COURTNEY, etc., Complainant,
vs.
FIDELITY & DEPOSIT COMPANY, Defendants. } No. 6654. At Law.

Assignment of Errors.

The defendant in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred upon the trial of this action, to wit:

1. The court erred in the rejection of evidence offered by the defendant upon said trial as follows, namely: A letter written on March 11, 1895, by Adolph Reutlinger as vice-president of the German national bank to Herman E. Bosler, the secretary and treasurer of the defendant, relative to the renewal on June 1st, 1895, of the bond given by J. M. McKnight while vice-president of the German national bank, on June 1, 1894, on which bond the defendant was held liable herein.

2. The court erred in the admission of evidence offered by the plaintiff of the following character: A letter of February 18, 1897, by the plaintiff as receiver of the German national bank to the defendant, and which letter was admitted as a notice of the default of J. M. McKnight under his bond, and to which letter the defendant

objected as not being such a notice as the bond called for and as not being sent early enough in time.

3. The court erred in allowing plaintiff to answer the following question: "Was there any statement made to you by Mr. Mullen (assistant of defendant's Louisville agent) as to the notice and proof of claim, as to whether or not he would require any more specific notice?" Over the objection of defendant said witness was allowed to answer said question, and said, "No, sir."

4. The court erred in refusing to permit the defendant to prove by the plaintiff's witness, John Kirwin, that the ledger of the German national bank was $3,000.00 out of balance during all the time he was individual book-keeper or longer, and during all the time said J. M. McKnight was vice-president and president
69 of the bank until it was closed by the comptroller, and that the books were irregular and out of balance during all that time, and that this was reported to the officers of the bank by the national-bank examiner who examined the books for the Comptroller of the Currency.

5. The court erred in refusing to permit the defendant to read as evidence to the jury a letter of Edwin Warfield, president of the defendant, and dated May 15th, 1896, and addressed to the German National Bank of Louisville, Kentucky, and also the reply of R. E. Reutlinger, the cashier of the said bank, written on May 29th, 1896, addressed to the defendant, said letter having been an inquiry by the president of the defendant as to the renewal of the bond of McKnight, and said response being an assurance by the cashier of the bank that said McKnight had up to that time performed his duties in an acceptable and satisfactory manner, and he, the cashier, knew of no reason why the bond should not be continued. Said letters were erroneously excluded on the ground that it had not appeared from the evidence that there was special authority from the board of directors to the cashier to write said letter of response of May 29th, 1896.

Said court also erroneously refused to allow the defendant to prove by circumstantial evidence that the board of directors selected the bondsman of McKnight and paid for the bond, and that the said cashier was acting in this matter with the knowledge and for the benefit and with the approval of the board of directors.

6. The court erred in giving to the jury the following instructions, to each of which the defendant objected and excepted at the time, namely:

Instruction 1.

"Before, however, going into that I should have said, if I have not, that the action that was brought in the Jefferson circuit court, some time in March, 1897, for the recovery of certain debts, should have no effect in your deliberations in this case. That was a suit, not upon this indebtedness except in respect to one particular item, that of $3,736, but was a suit upon other indebtedness. It is a suit in several paragraphs, one of which is upon notes and obligations executed by McKnight to the bank, but the only one of the items

mentioned in that suit that is contained in the suit in the State court is that of $3,736, which represents money that had been paid through the Union national bank upon the debt of one Embry.
70 I need not go into any reasons with you upon the subject, but the court is clearly of the opinion that no importance should be attached to that suit or any of its affirmations in your deliberations in this case."

Counsel for defendant objected and excepted to the foregoing portion of the charge. Three of the items set out in said action are now embraced in this action on said bond; and the plaintiff's notice thereof to defendant & the demand upon defendant therefor were delayed too long.

Instruction 2.

"The defendant insists upon this clause of the contract between it and the bank, that the 'employer shall immediately give the company notice in writing of the discovery of any default or loss hereunder, and shall file its or their claims hereunder, with full particulars thereof, as soon as practicable thereafter, and no claim which shall not be so filed by the employer with the company, within six months after the expiration or cancellation of its bond, or within six months after the employé shall have ceased to be in the employer's service, shall be payable hereunder.' In considering that clause of the contract between these parties I do not think the word 'immediate' should be given such construction as that it would mean instantly, but I believe it conforms with the views of the supreme court and the authorities generally to tell you that it means that it was the duty of the plaintiff in this case to give, as soon as reasonably practicable and with promptness, notice of the discovery of any default. It did not mean that as soon as one was suspected that notice should be given, but if you believe from the evidence that within a reasonable time after the receiver in this case, and you must remember that he is the receiver merely, and that he knew nothing about the management of this bank, nothing of its affairs, until he was appointed—if you believe that within a reasonable time after he discovered, actually discovered a default, he gave the notice of the 18th day of February, 1897, you are at liberty to infer that that part of the obligation of this bond has been performed."

The plaintiff's letter of February 18th, 1897, was not such notice or claim as was required by the contract, and was not early enough in time, and said instruction was misleading.

Instruction 3.

"It (the bond) also requires that the insured, that is to say,
71 the bank, shall file with the company his or their claim hereunder, with full particulars thereof, as soon as practicable. Now I do not believe that that means that the particulars shall be filed until they are known. In this case the evidence I think will justify you in the conclusion that this claim was made as soon as

particulars of this kind were known. One of the important reasons why this suit that was filed in the State court was not regarded as important evidence in this was that it does not show anything concerning the particulars of this debt, nor does it show that the plaintiff had known the particulars before this suit was filed. I think you will be justified in concluding from the evidence that with reasonable promptness, after the particulars of this claim were ascertained by the plaintiff, that this claim was made in such detail that no fault has been found with it so far as has appeared."

There was no sufficient evidence that would justify the jury in finding that the particulars were filed within a reasonable time. It appeared from the suit in the State court mentioned in the charge that the receiver in this case had knowledge of the particular default of $3,736 and two others which were combined as $2,253.00 one being for $10,000.00 and one for $1,253.00 when he filed that suit on March 6th, 1897, and still he sent no proper notice or claim to defendant till July 3rd, 1897, and said instruction was misleading and erroneous.

Instruction 4.

"The only other two clauses to which I need call your attention at all are perhaps most important for you to consider. The first one, though not the first one in the paper, that I allude to, is that which reads in this way: 'That there shall be complete inspection of the accounts and books of the employé, on behalf of the employer, at least once in every twelve months from the date of this bond, such inspection shall include an examination of all cash and securities of which the employé shall have custody or charge.'

"Now, gentlemen, the evidence on that subject has not been full. It is for you to determine whether there was that inspection, that complete inspection of the accounts and books of the employé on behalf of the employer, within at least every twelve months, and whether it included an examination of the cash and securities which the employé shall have personally in charge. This would be a much more important consideration if the president of the
72 bank instead of the cashier had charge of the securities or cash of the bank. The president, I tell you as a matter of law, does not have charge of the cash or securities of a bank, so that the president is probably but little concerned with this particular clause of this contract."

Said instruction was misleading and erroneous.

Instruction 5.

"The other, the last clause to which I will call your attention reads this way: 'That the employer shall observe or cause to be observed due and customary supervision over the employé, for the prevention of default, and if the employer shall at any time during the currency of this bond, condone any act or default upon the part of the employé which would give the employer the right to claim

hereunder, and shall continue the employé in his service without written notice to the company, the company shall not be responsible hereunder for any default of the employé which may occur subsequent to such act or default so condoned.'

Now, gentlemen, as I said, this is a bond given to secure the bank against loss by reason of the fraudulent acts of McKnight. It was was not given idly; it was given for the very purpose of securing the bank against McKnight's fraudulent acts; but at the same time these obligations upon the part of the bank were also expressed in the contract and must be given due weight; but of course these contracts as generally written by the security companies themselves, with great pains, great elaboration is used for the purpose of putting in as many things as possible for the assured to do, I mean the bank in this case. These conditions must be observed by the bank, but they must be observed on a reasonable construction of these terms, on a construction that the court thinks is the just and proper one. The provision that the employer shall observe or cause to be observed due and customary supervision over the employé for the prevention or default, is an important part of this contract and its proper meaning important to be ascertained.

What is due or customary supervision is something that has not been made very clear by the evidence in making out this defense. I don't know that it has been made clear to the jury any more than it has to the court, as to what is the customary supervision that is meant, or what is the due supervision that is meant. Possibly it may mean and may be fairly considered to mean a reasonable vigilance upon the part of the bank to prevent defaults.

Now what is meant by that word default in this connec-
73 tion? I suppose that it may fairly be said that it means that there shall be observed due and customary supervision over the employé for the prevention of fraudulent acts. I suppose it is just to say that this word default means the violation of this contract, or the doing of such an act as could be brought fairly within the provisions of this bond. That is to say, the word default here would mean precisely what the previous part of the bond meant when it said fraudulent acts of McKnight. So that this obligation that the bank assumed here was to use due and customary supervision over the employé for the prevention of his committing fraudulent acts. Now it is for you to say whether there is no satisfactory proof upon that subject—whether there was due and customary supervision to prevent McKnight from perpetrating these frauds. The contract goes on to say if the employer shall at any time during the currency of this bond condone any act or default on the part of the employé, which would give the employer the right to claim hereunder, and shall continue the employé in its service without written notification to the company, the company shall not be responsible hereunder for any default of the employé which may occur subsequent to such act or default so condoned. Now it is not very clear from the evidence what is claimed to bring this case within that clause of the contract. Possibly those overdrafts may be considered in that connection. Now I take it that a mere overdraft by the

president of a bank which had been paid by the cashier, and for which the cashier would also be responsible to the bank if he paid it wrongfully, a mere overdraft without regard to the amount of it, say $10 or $15, a mere overdraft of the president on the funds of the bank would not of itself be a fraudulent act.

You would not infer it was a fraudulent act upon the mere act of his making an overdraft; and I suppose if the bank consented to these overdrafts, that they would not be fraudulent acts upon the part of the president, or anybody else that would make an overdraft. The mere fact of drawing for more than you have got in the bank without any fraudulent intent in that mere transaction, would hardly be a fraudulent act within the meaning of this bond. Now, I suppose in this case, if the bank had known that McKnight was making these drafts for these various fraudulent purposes, such as buying up councilmen, buying up aldermen, paying his own private personal debts; if the bank had known that and consented to it, there would not have been a fraudulent act by McKnight for which the bank could recover against this company. But if you
74 believe from the evidence that the bank did not know of the fraudulent purposes for which these overdrafts were made, if the overdrafts were made in connection with this matter—if you believe the bank did not know the fraudulent purposes, then that changes the result; because if the bank did not know and still consented to it, it would not relieve the act of McKnight from the character of being a fraudulent act. So that, as I view this case—you must remember, however, that you are the sole judges of the evidence in this case, its credibility—as I view this case, however, there would be no fraudulent acts upon McKnight's part, limiting my observations not to the overdrafts, there would be no fraudulent act upon his part merely in an overdraft, if there were no fraudulent intent behind it, which was concealed from the bank."

The foregoing instruction did not submit correctly to the jury consideration of knowledge on the part of the officers or directors of the bank other than McKnight which they had or would have had if customary supervision had been exercised.

Instruction 6.

"I do not think that the knowledge of a cashier of a bank, speaking generally, if the knowledge of the bank as to any matter that does not come within the customary or ordinary duties of a cashier or those which have been specially imposed upon him by the action of the bank. I do not think Mr. R. E. Reutlinger in this case, in respect to any matter which he knew or could do, represented the bank, if it was outside of his ordinary duties; and I do not recall anything that he knew, so far as the proof shows that would in anywise affect the liability of the defendant in this case."

The defendant objected to the foregoing portion of the charge on the ground that the knowledge of the cashier of the acts of McKnight in respect to his overdrafts and his transactions with Britt

& Reeder and with Edmunds and Sachs, etc., was the knowledge of the bank.

Instruction 7.

"Now, the vice-president of the bank tells you that he was about there as vice-president, on a small salary largely because it was supposed that he knew of the solvency, understood generally the financial condition of the customers of the bank. He was not its chief executive office-; he was not the manager of the bank, and the mere fact that he may have occasionally gone in and assisted in the way that he explained to you, the cashier in the discharge of his duties, particularly when the cashier was necessarily absent on account of sickness; I do not think that he would then have any more power to bind the bank by his acts than the cashier himself could have done if present.

The testimony in respect to the knowledge of the bank of the purpose for which the $2,000 was taken out at half past six or seven in the evening, I say the knowledge of the bank respecting that must be proven, in my judgment, in such a way as to satisfy the jury that the bank, as distinguished from any mere director of it, knew of that transaction. The elder Reutlinger tells you that he did not know the purpose for which that money was taken out of the bank. He knew it was taken out after the ordinary banking hours, being taken out at seven or half past seven o'clock. The bank sometimes for special reasons he named had been kept open. Now, there is no inference to be drawn against R. E. Reutlinger because he at the instance of the president kept open the bank for the purpose of, as he said, introducing certain friends at a late hour. If Mr. R. E. Reutlinger had known of the fraudulent purpose of McKnight or had participated in it, that might have been a different thing; but he says he did not. He did not know what this money was paid out for. On the demands of the president he paid the money, on the discount arranged by the president, and that is all he knew about it. The only conflict of evidence in the case is that Mr. Reisch says that within a short time, a day or two afterward, he was informed by the elder Reutlinger that this money was used for this political or corrupt purpose. It is for you to reconcile this statement. If you believe from the evidence that the bank did know of this fraudulent purpose, and that this default of McKnight's, this fraudulent act of McKnight's, in getting this $2,000, was known to the bank at the time, then I instruct you that all of the liability of the defendant in this case would cease then, that being the earliest, or one of the earliest, if not the earliest of all these transactions. If you believe from the evidence that this transaction was known and condoned by the bank at the time, before these other transactions occurred, then the defendant in this case is not liable. But if you believe on the contrary that the bank did not know it, that it was the fraudulent act of McKnight alone, not participated in by the bank—when I say the bank, I mean the bank, I do not mean any individual director—then the defendant is liable."

76 The defendant objected to that portion of the charge because it declared that the knowledge of an individual director or directors of the acts of McKnight was not the knowledge of the bank, and the jury should have been instructed that the knowledge of the vice-president, who was a director, and of Mr. Reisch, a director, should be imputed to the bank itself; but the court erroneously overruled the objection of defendant and let said instruction stand.

Instruction 8.

During its consideration of this case, the jury asked further instructions of the court, and the jury being brought into open court in the presence of counsel for both sides, the following proceedings were had:

By the COURT: The jury have addressed to the court in writing, this inquiry:

"If the jury agree that the directors of the bank were careless in the management of the bank, shall the jury find for the defendant?"

"Gentlemen of the jury, no such issue as that stated in this question was presented. The mere question of whether or not the directors generally were careless in their management of the bank is not a question for your consideration, nor would it exempt the defendant from the obligation imposed by the bond sued on. You have already been instructed as to the meaning and effect of the condition of the bond as to due and customary supervision and outside of that there is no provision as to carelessness."

And to this instruction the defendant objected, because it was misleading and erroneous.

ST. JOHN BOYLE &
EDWARD J. McDERMOTT,
Att'ys for Defendant.

The supersedeas bond above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

R. H. COURTNEY, Receiver of the German National Bank of Louisville,
vs.
THE FIDELITY & DEPOSIT COMPANY OF MARYLAND.

77 Know all men by these presents, that we, Fidelity & Deposit Company of Maryland, as principal, & St. John Boyle, surety, are held and firmly bound unto R. H. Courtney, receiver of the German National Bank of Louisville, in the sum of fifteen thousand dollars, to be paid to the said R. H. Courtney, receiver of the German National Bank of Louisville, executors or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and

each of our, heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 15th day of July, A. D. 1899.

Whereas, the above-named Fidelity & Deposit Company of Maryland hath prosecuted a writ of error to the United States circuit court of appeals for the sixth circuit to reverse the judgment rendered in the above-entitled suit, by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such, that if the above-named Fidelity & Deposit Company of Maryland shall prosecute its said writ of error to effect, and answer all damages and costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FIDELITY & DEPOSIT CO. OF MARYLAND,
By ST. JOHN BOYLE, *Att'y.* [L. S.]
ST. JOHN BOYLE. [L. S.]

Sealed and delivered in presence of:
HENRY F. CASSIN,
Deputy Clerk, U. S. Court.

Approved July 15", 1899.
WALTER EVANS, *Judge.*

DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 106 pages contain a true and correct transcript of the record and proceedings in the case wherein R. H. Courtney, receiver of the German National Bank of Louisville, is plaintiff, and The Fidelity & Deposit Company of Maryland is defendant, as the same appears from the files and record in my said office.

Witness my hand and seal of said court, this 24th day of July, 1899.

[SEAL.]

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN, *D. C.*

78 UNITED STATES OF AMERICA, } *ss:*
District of Kentucky, Sixth Judicial Circuit, }

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between R. H. Courtney, receiver of the German National Bank of Louisville, plaintiff, against Fidelity & Deposit Company of Maryland, defendant, a manifest error hath hap-

pened, to the great damage of the said Fidelity & Deposit Company of Maryland, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the sixth circuit, together with this writ, so that you have the same at Cincinnati, in said circuit, on the * 12th day of August next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of July, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-fourth.

THOS. SPEED,
Clerk of the Circuit Court of the United States,
Kentucky District,
[SEAL.] By HENRY F. CASSIN,
Deputy Clerk.

Allowed by:
WALTER EVANS,
Dist. Judge.

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* Not exceeding 30 days from the day of signing the citation.

79 UNITED STATES OF AMERICA, } ss:
District of Kentucky, Sixth Judicial Circuit, }

To R. H. Courtney, receiver of the German National Bank of Louisville, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the* 12th day of August next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kentucky, wherein Fidelity & Deposit Company of Maryland is plaintiff in error, and you are defendant in error, to show cause, if any there by, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 15th day of August, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence

of the United States of America the one hundred and twenty-fourth.

[SEAL.] WALTER EVANS,
Dist. Judge.

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* Not exceeding 30 days from the day of signing.

I hereby accept service of the within citation, July 25, 1899.
W. M. SMITH,
Attorney for R. H. Courtney, Receiver.

80 And afterwards, to wit, on August 5th, 1899, præcipe for appearance was filed, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1898.

FIDELITY & DEPOSIT CO. OF MARYLAND
vs.
R. H. COURTNEY, Receiver German National Bank. } No. 751.

To the clerk of said court:

Please enter my appearance as counsel for the plaintiff in error.
ST. JOHN BOYLE.

And afterwards, to wit, on October 26th, 1899, a stipulation was filed clothed in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

THE FIDELITY & DEPOSIT COMPANY OF MARYLAND
v.
R. H. COURTNEY, Receiver. } Stipulation.

It is agreed between the parties herein that this cause shall be continued for argument until the November session of this court.
W. M. SMITH, *Att'y for Receiver.*
ST. JOHN BOYLE &
EDWARD J. McDERMOTT,
For Plaintiff in Error.

81 And afterwards, to wit, on November 14th, 1899, a stipulation postponing argument was filed, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

THE FIDELITY & DEPOSIT COMPANY, Plaintiff in Error,
vs.
R. H. COURTNEY, Receiver. } Stipulation.

It is agreed between the plaintiff in error and the defendant in error that this case shall be postponed for argument to the January term.

ST. JOHN BOYLE &
E. J. McDERMOTT,
For Plaintiff in Error.
W. M. SMITH,
For Defendant in Error.

And afterwards, to wit, on January 2nd, 1900, a stipulation continuing argument to the February term was filed, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

FIDELITY & DEPOSIT COMPANY, Plaintiff in Error,
vs.
R. H. COURTNEY, Receiver. } Stipulation.

On motion of the defendant in error, and with the consent of the plaintiff in error, this case is passed for argument to the February term.

ST. JOHN BOYLE &
E. J. McDERMOTT,
Att'ys for the Plaintiff in Error.
W. M. SMITH,
Att'y for R. H. Courtney, Receiver, &c.

82 And afterwards, to wit, on February 15th. 1900, an entry was made upon the journal of said court, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

FIDELITY & DEPOSIT CO. OF MARYLAND
vs.
R. H. COURTNEY, Rec. of German National Bank of Louisville.

This cause coming on to be heard this day, it was argued on behalf of the plaintiff in error by Hon. E. J. McDermott and on behalf of the defendant in error by Mr. Wm. M. Smith, and the further hearing is continued until Monday morning, the 19th, at 9.30, or 26th, at 9.30 a. m.

And afterwards, to wit, on February 26th, 1900, an entry was made upon the journal of said court, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

FIDELITY & DEPOSIT CO. OF MARYLAND
vs.
R. H. COURTNEY, Receiver.

This cause having been continued for hearing until this day, it was further argued for the plaintiff in error by Hon. E. J. McDermott and was submitted to the court. Plaintiff is granted one week within which to file reply brief.

83 And afterwards, on July 13th, 1900, a judgment was rendered in said cause, which reads and is as follows:

Judgment.

84 United States Circuit Court of Appeals for the Sixth Circuit.

THE FIDELITY & DEPOSIT CO. OF MARYLAND
v.
R. N. COURTNEY, Receiver of the German National Bank of Louisville, Ky. } No. 751.

Error to the circuit court of the United States for the district of Kentucky.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

85 And afterwards, to wit, on July 23rd, 1900, an opinion was filed in said cause, which is in the words and figures as follows:

Opinion.

86 United States Circuit Court of Appeals, Sixth Circuit.

THE FIDELITY & DEPOSIT COMPANY OF Maryland, Plaintiff in Error,
v.
R. H. COURTNEY, Receiver of the German National Bank of Louisville, Defendant in Error. } No. 751. Error to the Circuit Court of the United States for the District of Kentucky.

Submitted February 26, 1900; decided July 13, 1900.

Before Lurton, Day, and Severens, circuit judges.

This action was brought by the receiver of the German national bank against the Fidelity & Deposit Company of Maryland, to recover upon a bond given to indemnify the bank against loss by

fraudulent acts of J. M. McKnight, as president thereof. It appears in the record that on June 1, 1894, McKnight was elected vice-president, and executed his bond for one year. Upon June 1, 1895, he was elected president and the bond was renewed by him as president, and was again renewed for the further period of one year. The petition sets up various defaults, aggregating $18,742.74, and prays judgment for the penalty of the bond in the sum of $10,000. The bond contained, among others, the following provisions:

* * * * * * *

"Whereas, the employé has been appointed in the service of the employer, and has been assigned to the office or position of * * * by the employer, and application has been made to the Fidelity and Deposit Company of Maryland for this bond;

"And, whereas, the said employer has delivered to the company a certain statement, and it being agreed and understood that such statement constitutes an essential part of the contract hereinafter expressed:

87 "Now, therefore, in consideration of the payment of the sum of * * * dollars, lawful money of the United States of America, to the company as a premium for the term commencing at the date hereof and ending on the * * * day of * * *, eighteen hundred and ninety * * *, at 12 o'clock noon, the company does hereby agree that it will, within three months after receipt of proof satisfactory to its directors, and subject to the conditions hereinafter expressed, reimburse the employer to an amount not in excess of the penalty of this bond, for such pecuniary loss as the employer shall have sustained by any fraudulent act or acts committed by the employé during the continuance of this bond, in the performance of the duties of his said office or position, or of such other position as he may be subsequently appointed to or called to fill by the employer in said service of money, securities or other personal property belonging to the employer, or for which the employer is responsible.

"This bond may be continued from year to year, at the option of the employer, at the same or an agreed premium rate, so long as the company shall consent to receive the same, in which case the company shall remain liable for any dishonest act of the employé occurring between the original date of this bond and the time to which it shall have been continued.

"This bond is issued and continued upon and subject to the following conditions and provisions:

* * * * * * *

"That the employer shall immediately give the company notice, in writing, of the discovery of any default or loss hereunder, and shall file with the company his or their claims hereunder, with full particulars thereof, as soon as practicable thereafter, and no claim which shall not be so filed by the employer with the company within six months after the expiration or cancellation of this bond,

or within six months after the employé shall have ceased to be in the employer's service, shall be payable hereunder.

* * * * * * *

"That upon notification to the company of any loss hereunder, the company's liability shall thereupon terminate as regards any subsequent act of the employé.

"That the employer shall observe, or cause to be observed, due and customary supervision over the employé for the prevention of default; and if the employer shall at any time during the currency of this bond condone any act or default on the part of the employé which would give the employer the right to claim hereunder and shall continue *to* the employé in its service without written notification to the company, the company shall not be responsible hereunder for any default of the employé which may occur subsequent to such act, or default so condoned.

* * * * * * *

"That there shall be a complete inspection of the accounts and books of the employé on behalf of the employer at least on-e in every twelve months, from the date of this bond, such inspec-
88 tion to include examination of all cash and securities which the employé shall have custody or charge.

"That the employé has not, within the knowledge of the employer, been at any time in arrears or default either in this or other employment.

"That the employer shall at once notify the company on becoming aware of the employé being engaged in speculation or gambling, or indulging in any disreputable or unlawful habits or pursuits.

* * * * * * *

"That the company may, upon giving one month's notice, in writing, to the employer, cancel its responsibility hereunder in so far as it concerns the acts or defaults of the employé subsequent to the end of such month; in which event it will, upon request of the employer, refund the proportion of the premium paid for the unexpired term of this bond."

The amended answer recites the provisions of the bond and sets up that neither the bank nor the receiver ever gave notice to the Fidelity and Deposit Company of Maryland of the defaults as required; that the bank did not observe the due and customary supervision over McKnight; that the vice-president, who was also a director, knew of the embezzlements of McKnight, yet neither the bank nor the receiver notified the company until long after the bank was closed, in January, 1897; that the receiver did not file his claim against said company until the 18th of February, 1897; that this notice did not give the particulars of McKnight's default, and that defendant did not fully know the same until the second of July, 1897; that Rudolph Reutlinger was teller and cashier, and as such had charge of such financial affairs as pertained to said offices; that Adolph Reutlinger was vice-president and was daily in the bank

and thoroughly familiar with all its business affairs and with the acts and defaults of said McKnight as president; that the directors were also familiar with McKnight's overdrafts; that McKnight's defaults and embezzlements were known to the directors, who allowed them to go on without the knowledge of the Fidelity and Deposit Company; that during the time McKnight was in office the books were out of balance about $3,000; that the directors and officers allowed McKnight to be constantly overdrawn in his personal account; that his overdraft, January 18, 1896, was $1,340.14, and on June 8, 1896, it was $626.23, and that, day in and day out, he was overdrawn, of which fact the directors had knowledge; and these irregular acts and defaults were not known to said defendant, otherwise it would have canceled the bond; that before the renewal of the bond in 1895–1896, it wrote the bank to ascertain if McKnight had been conducting himself properly, and was informed by
89 the cashier that McKnight had discharged his duties faithfully; that such statements were made with the knowledge of the directors, but that said statements were false and fraudulent, which at the time was unknown to said defendant, and that thereby the company was led to renew the bond, which otherwise would have been canceled. And by another amended answer it is charged that McKnight's wrong doings were known to the directors of the bank when they occurred or within a few days thereafter, but that said defendant was not notified until long after the bank went into the hands of a receiver. Replication was filed and the case went to trial, resulting in a verdict for plaintiff. Testimony was offered, tending to show various transactions of McKnight's in the course of his business in the bank, among other things, the overdrafts of McKnight; and that checks were given by him and carried by the cashier as cash items at the direction of McKnight for a considerable length of time. There is also testimony tending to show that McKnight, while a candidate for office of mayor in the city of Louisville, which office was to be filled by the council of said city, obtained $1,000 for one Edmunds, in bills of $100 each, which money was obtained on Edmunds' check, he, at the time, having no account at the bank as an individual, but Edmunds & Co. had an account there. Edmunds testified he understood the check was to be taken care of by McKnight. It was also testified that a loan was procured of $2,000 to Britt and Reeder, which money was obtained at the bank after banking hours, and that McKnight said he had a big scheme on hand and it appeared this money was given for the purpose of obtaining an illegal contract with the councilmen as to possible legislation which might come before them. McKnight, on being asked for an explanation of the matter, claimed that it was all right; that the note was good; that the matter was brought before the board of directors, where McKnight made an explanation to the same effect, and that it seemed to satisfy the board.

DAY, J., after thus stating the case, delivered the opinion of the court:

1. It is unnecessary to enter into a detailed account of the various defaults, or comment upon the knowledge thereof of the bank directors, as there was a conflict of testimony upon that subject, upon which the court charged the jury as follows:

"There was also evidence tending to show that J. M. McKnight was president of the bank, and the other officers of the bank, including the directory, had entire confidence in his honesty and integrity up to the time the bank was closed; that none of them had any knowledge that any act of his, in the management of said bank, was fraudulent or dishonest, until after the closing of the bank; that said bank had a discount committee who regularly examined and passed on the papers of the bank, as required of such committee, and the directory of said bank undertook to make a monthly investigation, sometimes twice a month, of the affairs of said bank, and required the president to go through the same with them and make a full report thereon; that some of the directors were in the bank almost daily inspecting its affairs, and that they did, at all times, observe due and customary supervision over said president for the prevention of default; that none of the officers of said bank, including the directory, had any knowledge of the various checks set up in the petition as fraudulent, and that were charged to the account of other parties than those drawing them, or on whom they were drawn, except the clerks who charged them up to said account as stated, and there was evidence tending to show that they charged them up to such accounts by the direction of McKnight, the president, and except further, R. E. Reutlinger, the cashier and teller of said bank, knew of said checks when they came into said bank, and was instructed to hold them as cash items by McKnight, but further than this he had no knowledge.

"As to the $2,000 Britt and Reeder note, there was also evidence tending to show that R. E. Reutlinger was required to stay at the bank until after banking hours, and was directed by McKnight to, and did lay out the $2,000 on said note to said parties, but that further than this he had no knowledge thereof.

"There was also evidence tending further to show that said R. E. Reutlinger informed his father, Adolph Reutlinger, vice-president, of the payment of this $2,000 that night, and that said Adolph Reutlinger made inquiry of McKnight to explain the transaction. That thereupon, McKnight told him that said parties were good and solvent, and the note was regularly discounted and all right, and that if required, Gaulbert or Whallen would sign same with them, and that he, McKnight, would guarantee the payment thereof; that the parties were obliged to have the money that night, and he so kept the bank open to let them have it.

"There was evidence tending further to show that said Adolph Reutlinger then went before the directory and told them what McKnight had said in regard to this note, and said to them that he had made some investigation and could not find that these parties

had any property; that he was unable to say whether or not they were good, and that thereupon McKnight came before said directory and made the same statement to them that he had made to Adolph Reutlinger, assuring them that the note was good, and that said directors believed him and relied on his statement, and so passed the note; that there was no other evidence tending to show any further knowledge of said note, or its true character, by the officers
91 or any of the directors of the bank than is herein stated, except in the testimony of Jacob Reisch, one of the directors, that some short time after the execution of said note, Adolph Reutlinger told him what he had learned thereof as herein stated, and further he says that said Reutlinger told him that the money was used in the mayor's race. This latter statement Adolph Reutlinger denied in his evidence."

Upon the subject of the duty of the bank, under these circumstances to notify the company of these transactions that it might end its obligations under the bond, if it saw fit to do so, the court charged the jury:

"Now, I suppose in this case, if the bank had known that McKnight was making these drafts for these various fraudulent purposes, such as buying up councilmen, buying up aldermen, paying his own personal debts; if the bank had known that and consented to it, there would not have been a fraudulent act by McKnight for which the bank could recover against this company. But if you believe from the evidence that the bank did not know of the fraudulent purposes for which the overdrafts were made, if the overdrafts were made in connection with this matter—if you believe the bank did not know the fraudulent purposes, then that changes the result; because if the bank did not know and still consented to it, it would not relieve the act of McKnight from the character of being a fraudulent act. So that, as I view the case—you must remember, however, that you are the sole judges of the evidence in this case and its credibility—as I view this case, however, there would be no fraudulent acts upon McKnight's part, limiting my observations now to the overdrafts, there would be no fraudulent acts upon his part merely in an overdraft, if there were no fraudulent intent behind it, which was concealed from the bank."

We think this instruction as favorable as the company was entitled to, and under it, if the jury found that the bank had knowledge that McKnight was doing the acts in question for fraudulent purposes, there could be no recovery upon the bond. We must remember that this obligation was intended to secure the bank against the fraudulent conduct of McKnight in the performance of the duties of his office or position; that McKnight's action, in order to require notice to the company, must have been "of the discovery of a default or loss under the bond." While McKnight might have been guilty of reprehensible conduct it would not require notice unless such as might result in the loss of security or money or personal property of the bank by fraudulent conduct in the performance of his duties to the bank. Such conduct as amounts to a default under the bond the employer is bound to report and if he condones or continues the

employé in his service, without written notice to the com-
92 pany, the latter would be discharged from responsibility. Misconduct, which would not amount to a fraudulent act affecting the duties of the officer of the bank, would not require notice unless it came within that clause of the bond which requires the employer to notify the company when the employé engages in gambling or speculation, or indulges in disreputable or unlawful habits or pursuits. Whether McKnight's conduct was of this character the court left to the jury to determine. They must have found that there was no such misconduct as would avoid the bond while the bank was in operation and which it was the duty of the bank to report to the company. In this connection it is averred that the court erred in saying that this knowledge must be the knowledge of the bank, intending thereby to exclude the knowledge of individual directors. In the charge above quoted, as to the knowledge of the bank directors, we have already said we find no error. We have carefully examined the record and find no knowledge brought home to the directors individually or the cashier in his individual capacity which was not brought to the attention of the board, which would amount to a default under this bond. Such knowledge, in order to be binding upon the bank, must have been acquired in the course of business of the bank transacted by such officer or director. It is not necessary to examine the numerous authorities cited upon this proposition. They are well summed up in Boone on the Law of Banking, sec. 132:

"Notice to the directors of a bank when assembled as a board is notice to the bank; nor can any subsequent change of directors require a new notice. * * * And notice to one or more of the directors, when engaged in the business of the bank, will be deemed notice to the bank."

The testimony shows no such knowledge of McKnight's conduct acquired in the bank's business by individual directors or officers of the bank and not known to the board, as would entitle the company to notice. As was said in American Surety Company *v.* Pauly, 170 U. S., 147:

"It may well be held that the surety company did not intend to require written notice of any act upon the part of the cashier that might involve loss, unless the bank had knowledge, not simply suspicion, of the existence of such facts as would justify a careful and prudent man in charging another with fraud or dishonesty. If the company intended that the bank should inform it of mere rumors or suspicions affecting the integrity of O'Brien, such intention ought to have been clearly expressed in the bond."

93 2. Upon the question of notice of McKnight's default, it is strenuously argued that the notice given by the receiver after he took possession of the bank is not such notice as is required, and for that reason there can be no recovery upon the bond. The bank was closed on the 17th of January, 1897. The receiver was appointed on the 22d of January, 1897. On the 18th of February the receiver gave the following notice:

"LOUISVILLE, KY., *February* 18, 1897.

"To the Fidelity & Deposit Company of Maryland, Baltimore, Md.

"GENTLEMEN: Referring to certificate No. 4043, issued from your security department guaranteeing the fidelity of Jacob M. McKnight, president of the German national bank, under your bond to him, No. 5002, issued June 1, 1894, in favor of such bank, we hereby notify you that said Jacob M. McKnight, as president, has been found in default to this bank, and that you will be required to make indemnity to me as receiver to the extent of said bond.

"Yours truly, R. H. COURTNEY,
"*Receiver German National Bank.*"

When this notice was offered in evidence it was objected to, the attorney for the defendant stating:

"We have no doubt he sent it (the notice), and make no point on that, but we desire to object to the admission of it, as not being the notice required in the contract, and therefore we received no notice whatever."

Exception was taken to the portion of the charge relating thereto, on the same ground that the introduction of the notice in testimony was taken, viz: that it was not such notice as was required by the contract, and was, therefore, misleading.

Neither in this exception, nor when the notice was offered in testimony, was it objected that the notice was not early enough in point of time, but in the assignments of error this averment is added. It may well be doubted if this is not extending the assignment of error beyond the exception taken. Assignments of error cannot broaden an exception, and will not be considered unless called to the attention of the court by proper exceptions. We are of opinion, however, that the court fairly left this question to the jury. It is testified by Mr. Courtney that immediately after the bank passed into his hands as receiver:

"I began to ascertain the defalcations. The experts, Mr.
94 Hays, a Government expert, and Mr. Escott, a national-bank examiner, were at work immediately after Mr. McKnight's arrest. I kept pace with their investigation. It was almost immediately after the bank closed that these defalcations became known; not all of them, but enough to ground the claim upon. I had that notice of February 18, 1897, mailed to the office at Baltimore. It is my impression that I mailed a like notice to the agent here."

The expert, Mr. Escott, testifies:

"We began to get these shortages about two or three weeks after the bank was closed. They were discovered from time to time. I began to discover them in two weeks."

If, as Escott says, they began to discover the shortages two or three weeks after the bank was closed, that would mean the discovery was first made between the 2d and 9th of February, 1897. The court left this question to the jury under the following instructions:

"The defendant insists upon this clause of the contract between

it and the bank that 'the employer shall immediately give the company notice in writing of the discovery of any default or loss hereunder, and shall file its or their claims hereunder, with full particulars thereof as soon as practicable thereafter, and no claim which shall not be so filed by the employer with the company, within six months after the expiration or cancellation of its bond, or within six months after the employé shall have ceased to be in the employer's service, shall be payable hereunder.' In considering that clause of the contract between these parties, I do not think the word 'immediately' should be given such construction as that it would mean instantly, but I believe it conforms with the views of the Supreme Court and the authorities generally to tell you that it means that it was the duty of plaintiff in this case to give, as soon as reasonably practicable and with promptness, notice of the discovery of any default. It did not mean that as soon as one was suspected that notice should be given; but if you believe from the evidence that within a reasonable time after the receiver in this case—and you must remember that he is the receiver merely, and that he knew nothing about the management of the bank, nothing of its affairs, until he was appointed—if you believe that within a reasonable time after he discovered—actually discovered a default—he gave the notice of the 18th day of February, 1897, you are at liberty to infer that that part of the obligation of this bond has been performed."

We think there was not such a lapse of time from the time the receiver began to discover these defaults until he gave the notice of February 18, 1897, as would require the question to be taken from the jury. We have already said no notice is required until
95 the bank had knowledge of facts which would justify it in charging dishonesty. In the Pauley case, *supra*, while it is true the bond says that notice must be given as soon as practicable, instead of immediately, Mr. Justice Harlan, says:

"It was left to the jury to determine when the receiver first acquired knowledge of acts indicating fraud or dishonesty on O'Brien's part, and they found, in effect, that he had no knowledge of any such act until after the report by the expert book-keepers, made about or a few days before May 23, 1892. The trial court went far enough when it said, in response to an inquiry by a juror, that notice given May 23, 1892, of a fraud by the cashier discovered as early as March 2d—the day on which O'Brien left the receiver—was not as soon as practicable after the receiver acquired knowledge of the facts."

Unless the lapse of time is so long as to be obviously a non-compliance with the contract, the question is one for the jury. In May on Insurance, section 462, it is said:

"If the notice be required to be 'forthwith,' or 'as soon as possible,' or 'immediately,' it will meet the requirement, if given with due diligence under the circumstances of the case, and without unnecessary and unreasonable delay, of which the jury are ordinarily to be the judges. To give the word a literal interpretation would, in most cases, strip the insured of all hope of indemnity, and policies

of insurance would become practically engines of fraud. Thus notice within eight days after the fire, and within five days after it came to the knowledge of the insured, has been held to be reasonable. So, where the fire happened on the tenth, and notice of loss dated the eleventh, reached the insurers on the fifteenth of the same month. But a delay of four months in one case, of thirty-eight days in another, of twenty days in another, and of eleven days in another, there being no sufficient excuse therefor, has been held to be unreasonable. Yet where the insurers had, contrary to their agreement, refused to issue a policy, they were held to have waived their right to object to a notice sent eleven months after the loss. Whether due diligence has been used in giving the notice is a question which is ordinarily left to the jury, to be found from all the circumstances in the case. But where the facts and circumstances bearing upon the question of due diligence are not in dispute, it becomes a question of law for the court" (May on Insurance, 3d edition, section 462).

In Donahue *v.* Windsor County M. Fire Ins. Co., 56 Vermont, 374, notice of a fire was required to be given forthwith. It was held that such notice must be given with due diligence and within a reasonable time, and although notice was given twenty-two days after the fire, it was held a question for the jury as to whether it was
96 given forthwith. It was said by the Supreme Court, in the Pauley case, *supra*, that an indemnity contract is to be construed most favorably to the insured. In speaking of fire-insurance policies, under consideration in the Vermont case, *supra*, the judge said, page 380:

"The condition that the insured should give the company notice forthwith should be construed liberally in favor of the insured."

In People's M. Accident Ass'n *v.* G. W. Smith, 126 Pa. St., 317, Chief Justice Paxson, in delivering the opinion of the court—this being a case in which an injury was received by one holding an accident policy, on September 4, 1887, notice being given to the company October 19th, the policy requiring immediate notice of the injury—said:

"The word 'immediate,' in the contract, must be construed to mean within a reasonable time thereafter, under all the facts and circumstances of the case, and what is a reasonable time must be decided by the jury, unless, as before observed, the delay has been so great that the court may rule it as a question of law."

In Bennett *et al. v.* Lycoming Co. Mutual Ins. Co., 67 N. Y., 277, speaking of a case where the notice was required to be given forthwith, and it had not been given until twenty-six days after, Judge Earl said:

"The word 'forthwith' does not here mean immediately or instantaneously after the fire. It means, and has been held to mean, within a reasonable time or with reasonable diligence after the fire." N. Y. Cen. Ins. Co. *v.* Nat. Protection Co., 20 Bar., 468; Inman *v.* Western Fire Ins. Co., 12 Wend., 452.

The word "immediate" is certainly no stronger than the word "forthwith," or the expression "as soon as possible." In Ben. Frank

lin Ins. Co. *v.* Flynn, 98 Pa. St., 628, it was held that thirty days' delay will not prevent the submission of the question to a jury, in a policy which required proofs to be submitted as soon as possible. In McFarland *v.* U. S. Mut. Ac. Association, 124 Mo., 204, the supreme court of Missouri held:

"Where an accident policy requires 'immediate' notice of the death of the insured to be given, and provides that the same shall be given by letter, notice given within ten days after the death is sufficient.

"The word 'immediate' will, in such cases, be construed to mean 'within a reasonable time.'"

See also Continental Ins. Co. *v.* Lippold, 3 Neb., 391; Hamden *v.* Milwaukee Mechanics Ins. Co., 164 Mass., 382; Niagara Fire Ins. Co. *v.* Scammon, 100 Ill., 645.

97 Assuming that the defalcations were becoming apparent to the experts so that they began to discover them two or three weeks after the bank was closed, we cannot say, as a question of law, that such facts had been discovered as would justify a prudent man in charging another with dishonesty so as to require notice, and we think the question was properly left to the jury under the instructions given. Some cases have been cited in which it seems a more restricted view of this requirement is taken, but we think the opinion here expressed is more consonant with the intention of the parties and the purposes of indemnity contracts. In Bouvier's Law Dictionary it is said of the word "immediate":

"Strictly it implies not deferred by any lapse of time, but as usually employed, it is rather within reasonable time having due regard to the nature and circumstances of the case."

3. Nor do we think there is any reasonable objection to the form of the notice given. The purpose of the notice was to enable the indemnity company to terminate its liability and to obtain such remedies as it might see fit to adopt against the defaulter. The notice sent was general in its character. It advised the company of the default, claimed the full amount of indemnity, and no objection was taken to it.

4. It was further objected at the trial that the proof of claims, which was required by the bond to be made out as soon as practicable after the default, was not furnished in time. This claim was filed in July, 1897. During all that time the investigation was going on, and the books of the bank were being examined. So far as the testimony discloses, the full particulars of the claim were not developed until July so as to be capable of proof.

5. It is claimed the court erred in excluding a certain letter signed by Reutlinger, cashier, concerning McKnight's performance of his duties as president. The president of the Fidelity & Deposit Company, on the 15th of May, 1896, wrote the bank as follows:

"BALTIMORE, MD., *May* 15, 1896.

"To German National Bank, Louisville, Ky.:

"DEAR SIR: We hereby notify you that bond No. 50[illegible]2 for $10,000,

issued by this company on behalf of Jacob M. McKnight, in your employ as president, will expire on the 1st day of June next.

"The premium, forty dollars, should be paid on or before the date of expiration, otherwise the bond will lapse. Kindly have the certificate below filled in and signed, and forward with re-
98 mittance for premium to Jos. O. Odiorne, general agent, when the renewal receipt will be sent to you.

"Yours respectfully,

"EDWIN WARFIELD, *President.*"

The certificate referred to was filled in by the cashier, having been inclosed in blank form in the letter from the company, and was returned of date May 29, 1896, to the Fidelity Company, and is in the following language:

"The Fidelity & Deposit Company of Maryland:

"This is to certify that on the — day of ——, 189–, the books and accounts of Mr. J. M. McKnight, *is* president, in our employ, as—has no books and accounts were examined by us, and we found them correct in every respect, and all moneys handled by him accounted for.

"He has performed his duties in an acceptable and satisfactory manner, and we know of no reason why the guarantee bond should not be continued.

"His salary is now $4,500, and he is employed as president.

"Signature: R. E. REUTLINGER,

"*Cashier, Employer.*

"Dated at Louisville, Ky., May 29, 1896."

This certificate, signed by the cashier, was excluded because there was no showing that there had been special authority from the board of directors authorizing or directing the cashier to fill out and send it. It is earnestly argued that the cashier, by virtue of his office, and having charge of the correspondence of the bank, had full authority to answer this communication in the way which he did, and being in the apparent scope of his authority, the bank is bound by it. A majority of the court are of opinion that the case is ruled by Ins. Co. *v.* Pauley, *supra*, in which the president wrote a similar letter for the cashier, and it was held that the president of the bank, in the absence of express authority, could not bind the bank. There is no showing that the bank authorized the cashier to fill out the certificate and return it. It is not a case of answering a usual letter of the bank in the course of its business. A certificate as to the prior conduct of McKnight was inclosed, and an answer required. Nothing is shown in this case showing express authority, and we do not think such inheres in the duties of the office of cashier without special authority.

Other errors are assigned which either fall within the principles already laid down, or are not of sufficient weight to require further attention. Finding no error in the record of the proceedings in the court below, the judgment is affirmed.

99 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of The Fidelity & Deposit Co. of Maryland *vs.* R. H. Courtney, receiver of the German National Bank of Louisville, No. 751, October term, 189–, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit,

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this fifth day of October, 1900.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

100 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

Being informed that there is now pending before you a suit in which the Fidelity and Deposit Company of Maryland is plaintiff in error and R. H. Courtney, receiver of the German National Bank of Louisville, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Kentucky, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the
101 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of October, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals, Sixth Circuit.

I return the above writ pursuant to a stipulation of counsel filed in this court this 3rd day of November, 1900, which is in the following words, to wit:

"Supreme Court of the United States, October Term, 1900.

FIDELITY & DEPOSIT COMPANY OF MARYLAND
vs.
R. H. COURTNEY, Receiver.
454.

It is stipulated between the parties to this cause that the certified copy of the transcript of record now on file with the clerk of the Supreme Court of the United States and which accompanied the petition for a writ of certiorari may be considered and treated as the record and proceedings in the said cause directed to be certified to the said Supreme Court, and this shall constitute a return to the writ.

ST. JOHN BOYLE &
EDWARD J. McDERMOTT,
Counsel for the Fidelity & Deposit Company of Maryland.
W. M. SMITH, *Att'y for Receiver.*"

Seal United States Circuit Court of Appeals, Sixth Circuit.

In witness whereof I have hereunto set my hand and the seal of the United States circuit court of appeals for the sixth circuit, at Cincinnati, Ohio, this 3rd day of November, 1900.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

102 [Endorsed:] File No., 17,939. Supreme Court of the United States. No. 178, October term, 1901. The Fidelity & Deposit Co. of Maryland *vs.* R. H. Courtney, receiver. Writ of certiorari and return. Filed Nov. 5, 1900.